District of Columbia Official Code

2001 Edition

TITLES 17 to 21

Review

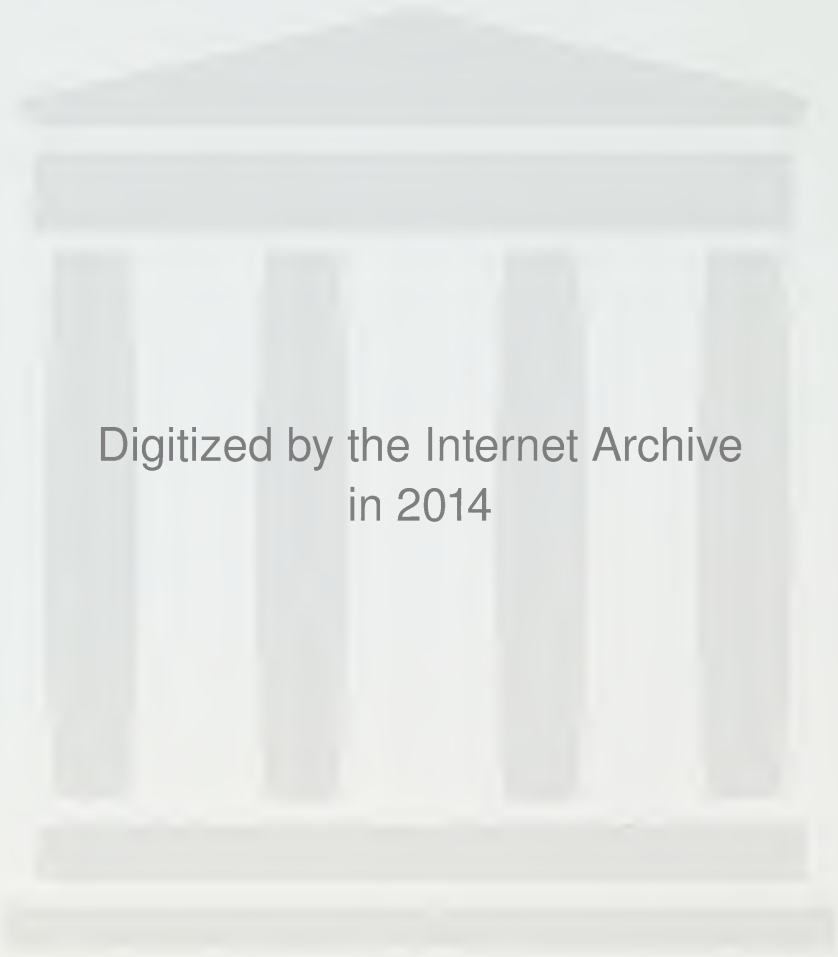
Wills

Descent, Distribution, and Trusts

Probate and Administration of Decedents' Estates

Fiduciary Relations and Persons with Mental Illness

40th ANNIVERSARY
of
HOME RULE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DISTRICT OF COLUMBIA

OFFICIAL CODE

2001 EDITION

Containing the Laws, general and permanent in their nature, relating to or in force in the District of Columbia (Except such laws as are of application in the General and Permanent Laws of the United States) as of September 13, 2012.

VOLUME 10

Title 17

Review

to

Title 21

Fiduciary Relations and Persons with Mental Illness

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Foreword to 2013 Commemorative Set

LexisNexis presents the 2013 republication of the District of Columbia Official Code, 2001 Edition to the D.C. bench and bar and to the citizens of the District of Columbia in a sincere belief that it will prove a material contribution to the orderly and efficient conduct of the government of the District and to the practice of law. LexisNexis is proud to help commemorate the 40th anniversary of Home Rule for the District of Columbia.

LexisNexis continues its tradition of excellence with its District of Columbia Official Code, 2001 Edition. This 2013 Volume 10 replaces any existing Volume 10 of the 2001 Edition and its 2012 Supplement, both of which may now be discarded, recycled, or retained for historical reference. Future supplements will be keyed to this 2013 Volume and not to any of its predecessors.

The District of Columbia Official Code, 2001 Edition, represents the eighth compilation of the laws of the District of Columbia and reflects an extensive renumbering of the 1981 Edition. Users should consult the historical citations at the end of each statute, and corresponding amendment notes, as guides to legislative currency. Research features such as case annotations, section references, effect of legislation notes, editor's notes, and the comprehensive index have been prepared by LexisNexis. Your set is kept up to date through regular supplementation, free access to the on-line Official Code at http://www.lexisnexis.com/hottopics/dccode and the periodic replacement of volumes. All case citations are Shepardized for accuracy and continued relevance. LexisNexis also publishes a District of Columbia Advance Legislative Service (ALS). The ALS gives you the latest session laws as they are passed, along with tables showing you which sections of the Code are affected.

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LexisNexis June 2013

PREFACE TO THE 2001 EDITION

The 2001 Edition of the District of Columbia Official Code marks the eighth time that a compilation of the laws of the District of Columbia has been published by, or under the authority of, the government of the District of Columbia or that of the United States. The District of Columbia Code was first published in 1929; eleven years later, the Second Edition (1940) was published; another eleven years later, the Third Edition (1951); ten years later, the Fourth Edition (1961); six years later, the Fifth Edition (1967); another six years later, the Sixth Edition (1973); and 8 years later, the Seventh Edition (1981) was published. The time between the publication of the Seventh Edition and this Eighth Edition represents the longest period, by almost a decade, that the District of Columbia Code has gone unrevised in its 72 year history.

The District's Charter, which in 1973, established the current tripartite government of the District of Columbia, makes it incumbent upon the legislative branch to publish and codify every act of the Council, as the Council directs, upon becoming law, so that the residents of the District may have ready access to the laws by which they are governed. In 1973, however, the framers of the District's constitution could not have foreseen the incredible technological advances that would occur in the next 25 years nor the impact they have on the Code.

With the close of the 20th Century the world has witnessed the triumph of the Information Age, the rise of the World Wide Web, and the explosion of word processing and data storage technology. These phenomena have helped make the reproduction of legal text and data a fast, easy, and inexpensive enterprise, giving rise to a plethora of publishing mediums, and have made it a relatively simple task to reproduce existing legal text, including the District of Columbia Code. The rapid rise of the Computer Age has allowed virtually anyone with an ordinary personal computer to reproduce and compile the laws of the District of Columbia.

The laws of the District, however, are fluid, not stagnant, as they are amended several times each year. The quality and accuracy of publications not directed by the Council are beyond its control. The Council can only warrant the Code for which it has authorized publication. Therefore, in order to ensure that the residents of the District may distinguish between the compilation of District laws as produced under the direction of the elected officials of the District of Columbia and those of other persons, we have added the word "Official" to the title of the Code. Also to ensure that the Council never loses the right to publish its own laws, the government of the District of Columbia has retained the copyright to the District of Columbia Official Code.

The codified laws of the District of Columbia are created as a result of legislative action on the part of 13 individuals elected by the residents of the

District of Columbia to enact the laws that govern the District, and by the Congress. Once the legislative process is complete, the Council, through its delegation of authority to its Office of the General Counsel, codifies the laws in the form of this Code. In the process of codification, the Office of the General Counsel interprets any discrepancies in the drafting of the laws using commonly recognized rules of statutory construction. No other entity is authorized by law to make these determinations. As set forth by federal law and recognized by the Courts of the District of Columbia, this Code establishes prima facie evidence of the laws in force in the District of Columbia.[1] It is this continuity of authority, from enactment to codification to judicial review that gives this Code its authenticity and officiality as the content of the laws of the District of Columbia.

The 2001 Edition represents a recodification of the 1981 Edition in that it contains a reorganization of the presentation of the laws, inclusion of some previously omitted legal provisions, and the omission of non-substantive extraneous provisions. The theory behind the recodification is to purify the organization of the Code which over many decades has seen the haphazard mixing of original ("organic") provisions of laws throughout the Code. In the 2001 Edition, we have established a system of codification that follows the legislative drafting principals established over many years in the Council's Office of the General Counsel.

The recodification is not an overhaul of the Code. Although a cleanup of the antiquated, repealed and omitted provisions is long overdue, it is not the province of the Office of the General Counsel to determine which laws should be expunged as obsolete. Such decisions should be left to a working group commissioned by the Council to recommend revisions to the Code. The Office of the General Counsel has simply separated the organic laws into discrete divisions and topical categories. As much as is possible, we have followed a rule that requires that all organic law remain intact: closely following the layout of the originating act. We have retained notes to repealed sections to aid in legal research and preserved the numbering style that was first introduced in the Second Edition. Thanks to the resourcefulness of the publisher and the Council's Office of the General Counsel staff, we have corrected provisions of law erroneously added to, or deleted from, prior editions.

The Code is organized into eight Divisions of practical law: government organization; judicial organization; decedent estates; criminal law; business law; education; property; and general laws. Each division is subdivided by subject matter called **Titles**, organic laws, called **Chapters** and **Subchapters**, and finally, individual **Sections** representing the individual sections of organic law. Occasionally, **Subtitles** are used to organize chapters of organic law, **Units** to organize subchapters, and **Parts** and **Subparts** to organize the additional divisions within the organic law. One important change that the user will notice, and hopefully appreciate, is that the District's Charter, the Home Rule Act, is codified in its entirety in one location so that the

1. *See* 1 U.S.C. § 204(b) (1994); *Sheetz v. District of Columbia*, 629 A.2d 515, 519 (D.C. 1993).

framework of the current District government can be readily found. We hope that the organization of the 2001 Edition of the District of Columbia Official Code will serve as a foundation for further refinement by future law revision commissions or their equivalent.

The 2001 Edition has been prepared under the supervision of Benjamin. F. Bryant, Jr., Codification Counsel, Office of the General Counsel, Council of the District of Columbia.

____ /s/_____

Linda W. Cropp

Chairman

Council of the District of Columbia

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General Counsel

Council of the District of Columbia

USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Official Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Official Code intended to increase the usefulness of the Code to the user.

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1. Government Organization.
2. Government Administration.
3. District of Columbia Boards and Commissions.
4. Public Care Systems.
5. Police, Firefighters, Medical Examiner, and Forensic Sciences.
6. Housing and Building Restrictions and Regulations.
7. Human Health Care and Safety.
8. Environmental and Animal Control and Protection.
9. Transportation Systems.
10. Parks, Public Buildings, Grounds and Space.

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*11. Organization and Jurisdiction of the Courts.
*12. Right to Remedy.
*13. Procedure Generally.
*14. Proof.
*15. Judgments and Executions; Fees and Costs.
*16. Particular Actions, Proceedings and Matters.
*17. Review.

DIVISION III. DECEDENTS' ESTATES AND FIDUCIARY RELATIONS

*18. Wills.
*19. Descent, Distribution, and Trusts.
*20. Probate and Administration of Decedents' Estates.
*21. Fiduciary Relations and Persons with Mental Illness.

DIVISION IV. CRIMINAL LAW AND PROCEDURE AND PRISONERS

22. Criminal Offenses and Penalties.
*23. Criminal Procedure.
24. Prisoners and Their Treatment.

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*Title has been enacted as law.

Title

DIVISION V. LOCAL BUSINESS AFFAIRS

*25. Alcoholic Beverages.
26. Banks and Other Financial Institutions.
27. Civil Recovery by Merchants for Criminal Conduct.
*28. Commercial Instruments and Transactions.
*29. Business Organizations.
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30. Hotels and Lodging Houses.
31. Insurance and Securities.
32. Labor.
33. Partnerships [Repealed].
34. Public Utilities.
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36. Trade Practices.
37. Weights, Measures, and Markets.

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41. Personal Property.
42. Real Property.

DIVISION VIII. GENERAL LAWS

43. Cemeteries and Crematories.
44. Charitable and Curative Institutions.
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48. Foods and Drugs.
49. Military.
50. Motor and Non-Motor Vehicles and Traffic.
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*Title has been enacted as law.

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1. United States Court of Appeals for the District of Columbia Circuit [Repealed].
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Chapter 1. United States Court of Appeals for the District of Columbia Circuit. [Repealed].

Sec.
17-101 to 17-104. [Repealed].

§§ 17-101 to 17-104. Appeal from District of Columbia Court of Appeals; filing, form and contents of petition; procedure, generally, on appeal from District of Columbia Court of Appeals; record; rules of court; time for petitioning for allowance of appeal from District of Columbia Court of Appeals; determination of appeal from District of Columbia Court of Appeals. [Repealed].

Repealed.

(July 29, 1970, 84 Stat. 565, Pub. L. 91-358, title I, § 146a1.)

Prior Codifications. — 1981 Ed., §§ 17-101 to 17-104.

Editor's notes. — Section 29 of D.C. Law 15-354 provided that Title 17 is designated Title 17 of the District of Columbia Official Code.

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CHAPTER 3. DISTRICT OF COLUMBIA COURT OF APPEALS.

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17-302. Regulation of appeals; record; costs.
17-303. Appeals from administrative orders and decisions.
17-304. Stay upon application for review of, or pending appeal from, administrative order or decision.
17-305. Scope of review.
17-306. Determination of appeals.
17-307. Time for taking or applying for allowance of appeals.

§ 17-301. Applications for allowance of appeals from certain Superior Court judgments; hearing; effect of denial.

(a) The application for the allowance of an appeal from a judgment of the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia, or from a judgment of the criminal division of that court where the penalty imposed is less than $50, provided for by section 11-721(c), shall be on a standard form, in simple language, prescribed by the Superior Court of the District of Columbia. If the appellant is not represented by counsel, the clerk of the Superior Court of the District of Columbia shall prepare the application in his behalf.

(b) The application provided for by subsection (a) of this section shall be filed in the District of Columbia Court of Appeals within the time limit prescribed by section 17-307(b), and shall be promptly presented by the clerk of that court to three judges thereof for their consideration. When any one of them is of the opinion that the appeal should be allowed, the appeal shall be recorded as granted, and the case set down for hearing on appeal. It shall be given a preferred status on the calendar, and heard in the same manner as other appeals in the court. When the three judges are of the opinion that the appeal should be denied, the denial shall stand as an affirmance of the judgment of the trial court, and there shall be no further appeal.

(Dec. 23, 1963, 77 Stat. 613, Pub. L. 88-241, § 1; Dec. 8, 1967, 81 Stat. 545, Pub. L. 90-178, § 2; July 29, 1970, 84 Stat. 565, Pub. L. 91-358, title I, § 146(a)(2)(A), 155(a).)

Prior Codifications. — 1981 Ed., § 17-301. 1973 Ed., § 17-301.

CASE NOTES

ANALYSIS

Criminal proceedings.
Proceeding in forma pauperis.
Small claims actions.
Verdict.

Criminal proceedings.

Notwithstanding Code provision that there should be no further appeal when judges of District of Columbia Court of Appeals were of opinion that appeal should be denied, United States Court of Appeals for District of Columbia Circuit had jurisdiction to review action of District of Columbia Court of Appeals in unanimously denying discretionary appeal from conviction in District of Columbia Court of General Sessions. D.C. Code 1961, §§ 11-321(b), 11-741(c), 17-301(b). Hollingsworth v. United States, 360 F.2d 842, 1966 U.S. App. LEXIS 6265 (C.A.D.C. 1966).

There might have been merit in defendant's contention that alternative sentence of twenty-

five dollar fine or 15 days in jail was not "less than $50", within meaning of Code, and that he should have had an appeal as of right to District of Columbia Court of Appeals, but such claim was not properly before United States Court of Appeals for District of Columbia Circuit where defendant, challenging denial of discretionary appeal, had not raised issue in court below. D.C. Code 1961, §§ 11-321(b), 17-301(b). Hollingsworth v. United States, 360 F.2d 842, 1966 U.S. App. LEXIS 6265 (C.A.D.C. 1966).

One member of a three-judge appellate court noted importance of issues raised as to whether alternative sentence of fine or imprisonment was invalid discrimination between those who are able to pay and those who are not, whether this question was mooted by payment of fine, and whether this question could be properly considered by Court of Appeals though it was not raised before District of Columbia Court of Appeals justified allowance of appeal. D.C. Code 1961, §§ 11-741(c), 17-301(b). Stone v. District of Columbia, 350 F.2d 728, 1965 U.S. App. LEXIS 5777 (C.A.D.C. 1965), affirmed by 359 F.2d 275, 123 U.S. App. D.C. 291, 1966 U.S. App. LEXIS 6565 (1966).

Proceeding in forma pauperis.

Requirement that indigent defendant appealing to District of Columbia Court of Appeals from conviction in U.S. Branch of Court of General Sessions must be provided transcript does not apply to cases in which penalty imposed is less than $50. D.C. Code 1961, §§ 11-321(b), 17-301(b). Hollingsworth v. United States, 360 F.2d 842, 1966 U.S. App. LEXIS 6265 (C.A.D.C. 1966).

It was congressional intent that District of Columbia Court of Appeals be permitted to weigh importance of question presented before deciding whether to hear case in which penalty imposed was less than $50, and that court is not required to provide transcript for assistance of applicant or his counsel in preparing leave to appeal in such case unless it can fairly be said that transcript is necessary in order to decide whether an important and significant question is presented. D.C. Code 1961, §§ 11-321(b), 17-301(b). Hollingsworth v. United States, 360 F.2d 842, 1966 U.S. App. LEXIS 6265 (C.A.D.C. 1966).

Small claims actions.

That judgments rendered in the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions are for small sums should not bar appellate review when plain legal error has been committed. D.C. Code §§ 11-321(b), 11-741(c), 17-301(b). Willis v. Retail Adjustment Bureau, Inc., 384 F.2d 312, 1967 U.S. App. LEXIS 5768 (C.A.D.C. 1967).

The United States Court of Appeals for the District of Columbia Circuit had jurisdiction to review action of the District of Columbia Court of Appeals in refusing to allow an appeal to that court from judgment of Small Claims and Conciliation Branch of District of Columbia Court of General Sessions for unpaid rent, in view of apparent error in the judgment for rent. D.C. Code§§ 11-321(b), 11-741(c), 17-301(b). Willis v. Retail Adjustment Bureau, Inc., 384 F.2d 312, 1967 U.S. App. LEXIS 5768 (C.A.D.C. 1967).

Verdict.

If the jury finds that the parties intended that a contract be divisible, such finding will not be set aside on appeal unless unsupported by substantial evidence. D.C. Code § 17-301(a). Howard University v. Durham, 408 A.2d 1216, 1979 D.C. App. LEXIS 489 (1979).

§ 17-302. Regulation of appeals; record; costs.

The District of Columbia Court of Appeals may regulate, generally, all matters relating to appeals, whether in the District of Columbia Court of Appeals or in the court below. It may prescribe by rules what part of the proceedings in the court below shall constitute the record on appeal, and may require that the original papers, instead of copies thereof, be sent to it. It may not require that the record or briefs on appeal be printed. If they are printed, the cost of printing may not be taxed as costs in the case.

(Dec. 23, 1963, 77 Stat. 613, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 17-302. 1973 Ed., § 17-302.

CASE NOTES

In general.

Pro se appellant's decision not to order a transcript required affirmance of judgment in favor of law firm in suit to collect payment; the appellant failed to present a record sufficient to show affirmatively that the trial court committed any error, and the Court of Appeals thus had only the unsupported and conflicting statements of alleged fact in the briefs. Van Durr v. Kator & Scott, 788 A.2d 579, 2002 D.C. App. LEXIS 4 (2002).

The responsibility of perfecting the record remains with appellant and cannot be shifted to either the trial court or appellate court. Van Durr v. Kator & Scott, 788 A.2d 579, 2002 D.C. App. LEXIS 4 (2002).

The normal, and much preferred, method of presenting the record where an appellant seeks to challenge rulings made in the course of trial or other hearing is by means of a verbatim transcript ordered from the court reporter. Van Durr v. Kator & Scott, 788 A.2d 579, 2002 D.C. App. LEXIS 4 (2002).

The appellant need not order a transcript of the entire proceedings, but may designate and order a transcript of those parts of the proceedings deemed necessary to demonstrate the alleged trial error. Van Durr v. Kator & Scott, 788 A.2d 579, 2002 D.C. App. LEXIS 4 (2002).

Appellate review is limited to matters appearing in the record, and the Court of Appeals cannot base review of errors upon statements of counsel unsupported by that record. Van Durr v. Kator & Scott, 788 A.2d 579, 2002 D.C. App. LEXIS 4 (2002).

In the future no trial judge may enter an order out of presence of parties or their counsel without first submitting it to the proper officer so that official copy may be forwarded and an appropriate docket entry may be entered. D.C. Code SCR, Civil Rule 77(d); D.C. Code Court of Appeals Rules, rule 4, pt. II(a)(3); D.C. Code § 17-302. Grier v. Rowland, 409 A.2d 205, 1979 D.C. App. LEXIS 512 (1979).

Although trial court, in criminal prosecution, erred in denying the government access to requested transcript, mandamus would not lie to correct the error in light of indication that trial court would correct its erroneous action, and of available alternatives through exercise of superintendent power. D.C. Code SCR, Civil Rule 201(a, b); D.C. Code SCR, Criminal Rule 57(a, b); D.C. Code §§ 11-946, 11-1745(b), 17-302; 18 U.S.C. § 753(b); U.S. Const. Amend. 6. United States v. Burka, 289 A.2d 376, 1972 D.C. App. LEXIS 362 (1972).

§ 17-303. Appeals from administrative orders and decisions.

An appeal from an order or decision as provided for in section 11-722, is commenced by filing, within the time prescribed pursuant to section 17-307(a), the written petition for review provided by section 11 of the District of Columbia Administrative Procedure Act (§ 2-510). The District of Columbia Court of Appeals may prescribe the necessary rules and procedures for review of administrative orders and decisions, consistent with such section 11.

(Dec. 23, 1963, 77 Stat. 614, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 565, Pub. L. 91-358, title I, § 146(a)(3)(A).)

Prior Codifications. — 1981 Ed., § 17-303. 1973 Ed., § 17-303.

CASE NOTES

ANALYSIS

Exhaustion of remedies requirement.
Parties.
Time for appeal.

Exhaustion of remedies requirement.

No one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted. Davis & Assocs. v. Williams, 892 A.2d 1144, 2006 D.C. App. LEXIS 83 (2006).

The doctrine of exhaustion of administrative remedies applies where a claim is cognizable in the first instance by an administrative agency alone; judicial interference is withheld until the administrative process has run its course. Davis & Assocs. v. Williams, 892 A.2d 1144, 2006 D.C. App. LEXIS 83 (2006).

The "exhaustion of remedies doctrine" is distinguishable from the doctrine of primary jurisdiction; the "primary jurisdiction" rule comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body, and in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views. Davis & Assocs. v. Williams, 892 A.2d 1144, 2006 D.C. App. LEXIS 83 (2006).

The requirement to exhaust administrative remedies is intended to maintain proper relationships between courts and the agencies that have been given regulatory responsibility in certain specialized areas. Davis & Assocs. v. Williams, 892 A.2d 1144, 2006 D.C. App. LEXIS 83 (2006).

The requirement to exhaust administrative remedies is not a rule of jurisdiction. Davis & Assocs. v. Williams, 892 A.2d 1144, 2006 D.C. App. LEXIS 83 (2006).

The requirement to exhaust administrative remedies is subject to exceptions for compelling reasons. Davis & Assocs. v. Williams, 892 A.2d 1144, 2006 D.C. App. LEXIS 83 (2006).

The failure to pursue the initial step in the administrative process does not relieve a party of the exhaustion of administrative remedies requirement. Davis & Assocs. v. Williams, 892 A.2d 1144, 2006 D.C. App. LEXIS 83 (2006).

Generally, some compelling reason must be shown to excuse a party from failure to exhaust administrative remedies. Davis & Assocs. v. Williams, 892 A.2d 1144, 2006 D.C. App. LEXIS 83 (2006).

The unavailability of an administrative remedy is a recognized exception to the exhaustion of remedies requirement. Davis & Assocs. v. Williams, 892 A.2d 1144, 2006 D.C. App. LEXIS 83 (2006).

Parties.

Notwithstanding whether citizens association was a "person aggrieved" within meaning of zoning act and regulations and, thus, entitled to appeal decision of zoning administrator authorizing petitioner to build a kiln at rear of her pottery shop without a permit, intervenor had standing to support appeal in that the board of zoning adjustment had a basis for jurisdiction over intervenor's claim independent of its jurisdiction over the petitioner's appeal by reason of fact that the intervenor's property adjoined the petitioner's property, and failure to adjudicate intervenor's claim would have resulted in unnecessary delay in resolution of case. Goto v. District of Columbia Board of Zoning Adjustment, 423 A.2d 917, 1980 D.C. App. LEXIS 402 (1980).

Time for appeal.

When an administrative agency has not adopted a specific time limit on appeals, a reviewing court should apply a standard of reasonableness. Goto v. District of Columbia Board of Zoning Adjustment, 423 A.2d 917, 1980 D.C. App. LEXIS 402 (1980).

It was not clearly wrong for the board of zoning adjustment to calculate timeliness of appeal from a decision of the zoning administrator by reference to the written order and, therefore, it was necessary for the reviewing court to defer to that interpretation. Goto v. District of Columbia Board of Zoning Adjustment, 423 A.2d 917, 1980 D.C. App. LEXIS 402 (1980).

§ 17-304. Stay upon application for review of, or pending appeal from, administrative order or decision.

(a) An application for review, or pendency of an appeal, provided for by section 17-303, does not operate as a stay of the order or decision from which the appeal is taken:

(1) in any case where, under existing law, a stay may not be granted; or

(2) in any other case unless so ordered by the Mayor or Council of the District of Columbia, by the independent agency, or by the District of Columbia Court of Appeals as provided by subsection (b) of this section.

(b) For good cause shown, and upon such conditions as may be required and to the extent necessary to prevent irreparable injury, the court may take appropriate and necessary action to preserve the status or rights pending conclusion of the review proceedings provided for by section 17-303.

(Dec. 23, 1963, 77 Stat. 614, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 565, Pub. L. 91-358, title I, § 146(a)(4); Mar. 24, 1998, D.C. Law 12-81, § 11, 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 17-304. 1973 Ed., § 17-304.

Editor's notes. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 17-305. Scope of review.

(a) In considering an order or judgment of a lower court (or any of its divisions or branches) brought before it for review, the District of Columbia Court of Appeals shall review the record on appeal. When the issues of fact were tried by jury, the court shall review the case only as to matters of law. When the case was tried without a jury, the court may review both as to the facts and the law, but the judgment may not be set aside except for errors of law unless it appears that the judgment is plainly wrong or without evidence to support it.

(b) The provisions of section 11 of the District of Columbia Administrative Procedure Act (§ 2-510) shall apply with respect to review by the District of Columbia Court of Appeals of an order or decision under that Act.

(Dec. 23, 1963, 77 Stat. 614, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 565, Pub. L. 91-358, title I, § 146(a)(5).)

Prior Codifications. — 1981 Ed., § 17-305. 1973 Ed., § 17-305.

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Clearly erroneous standard.

When reviewing a denial of a motion for judgment of acquittal, the Court of Appeals will not disturb the trial court's findings of fact unless they are clearly erroneous. Thomas v. District of Columbia, 942 A.2d 645, 2008 D.C. App. LEXIS 77 (2008).

A trial court's findings of fact relevant to the essential elements of a claim of attorney-client privilege will not be overturned unless clearly erroneous. Jones v. United States, 828 A.2d 169, 2003 D.C. App. LEXIS 434 (2003), writ of certiorari denied by 540 U.S. 1166, 124 S. Ct. 1182, 157 L. Ed. 2d 1214, 2004 U.S. LEXIS 915, 72 U.S.L.W. 3487 (2004).

An appellate court reviews a trial court's evidentiary rulings for abuse of discretion and will reverse only if the exercise of discretion is clearly erroneous. Pickett v. United States, 822 A.2d 404, 2003 D.C. App. LEXIS 225 (2003).

In order to show plain error, the party alleging error must demonstrate that the trial court's decision was plainly or obviously wrong and that the error was so serious that failure to correct it will result in a miscarriage of justice. In re S.S., 821 A.2d 353, 2003 D.C. App. LEXIS 220 (2003).

The predicate finding of bad faith in prosecuting claims, as basis for award of attorney fees to opposing party, is a factual one which the appellate court reviews under the clearly erroneous standard. Fischer v. Estate of Flax, 816 A.2d 1, 2003 D.C. App. LEXIS 19 (2003), remanded by 935 A.2d 362, 2007 D.C. App. LEXIS 659 (D.C. 2007), remanded by 935 A.2d 1091, 2007 D.C. App. LEXIS 669 (D.C. 2007).

Court of Appeals would review for plain error defendant's challenge to jury instruction on intent element of offense of cruelty to children, which challenge was not raised in the trial court. Jones v. United States, 813 A.2d 220, 2002 D.C. App. LEXIS 735 (2002).

Under the plain error standard, the error must be: (1) obvious or readily apparent, and clear under current law; and (2) so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of the trial. Jones v. United States, 813 A.2d 220, 2002 D.C. App. LEXIS 735 (2002).

Grounds not raised in trial court will not require reversal on appeal, absent plain error. Jones v. United States, 813 A.2d 220, 2002 D.C. App. LEXIS 735 (2002).

Under the plain error standard, the Court of Appeals will reverse only if the error is obvious and so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of the trial. Jones v. United States, 813 A.2d 220, 2002 D.C. App. LEXIS 735 (2002).

Claim of constructive amendment of indictment which was not raised at the trial level must be reviewed under three-part plain error test: first, there must be error, i.e., deviation from a legal rule; second, the error must be plain, i.e., obvious or clear under current law; and third, the error must affect substantial rights. Johnson v. United States, 812 A.2d 234, 2002 D.C. App. LEXIS 721 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2098, 155 L. Ed. 2d 1082, 2003 U.S. LEXIS 3888, 71 U.S.L.W. 3722 (2003).

Court of Appeals would only review defendant's claim that trial court mishandled juror, who slept through portions of trial, for plain error, where defendant acquiesced to judge's handling of matter. Johnson v. United States, 812 A.2d 234, 2002 D.C. App. LEXIS 721 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2098, 155 L. Ed. 2d 1082, 2003 U.S. LEXIS 3888, 71 U.S.L.W. 3722 (2003).

Trial court's decision to watch juror that two state attorneys claimed slept through substantial portion of second day of murder trial and missed essential testimony, rather than conduct an inquiry to determine whether juror was in fact sleeping through testimony, did not prejudice defendant, and thus did not constitute plain error, even though a direct inquiry into issue was required under circumstances, where juror slept through portions of state's case, and defendant was convicted of voluntary manslaughter rather than first degree murder. Johnson v. United States, 812 A.2d 234, 2002 D.C. App. LEXIS 721 (2002), writ of certiorari denied by 538 U.S. 1045, 123 S. Ct. 2098, 155 L. Ed. 2d 1082, 2003 U.S. LEXIS 3888, 71 U.S.L.W. 3722 (2003).

In reviewing bench trials, the appellate court will not reverse unless an appellant has estab-

lished that the trial court's factual findings are plainly wrong, or without evidence to support them. Harper v. United States, 811 A.2d 808, 2002 D.C. App. LEXIS 673 (2002).

Judicial decisions under rule authorizing trial court to seal a defendant's arrest record constitute findings of fact, and thus, the trial court's factual findings under the rule are reviewed to determine whether they are clearly erroneous. Harper v. United States, 811 A.2d 808, 2002 D.C. App. LEXIS 673 (2002).

Plain error standard applied to review of defendant's claims of prosecutorial impropriety, where defendant made no objection at trial. Harper v. United States, 811 A.2d 808, 2002 D.C. App. LEXIS 673 (2002).

The trial court's underlying factual findings are reviewed under the clearly erroneous standard and will be set aside only if they lack substantial support in the record. Di Giovanni v. United States, 810 A.2d 887, 2002 D.C. App. LEXIS 655 (2002).

Trial court's factual findings are binding upon the Court of Appeals unless they are clearly erroneous; if the findings are acceptable, the Court of Appeals will not disturb the court's judgment unless it is plainly wrong or without evidence to support it. Langon v. Reilly, 802 A.2d 951, 2002 D.C. App. LEXIS 317 (2002).

The appellate court reviews the underlying factual determinations, regarding plaintiff's standing, under the clearly erroneous standard. Bd. of Dirs. of the Wash. City Orphan Asylum v. Bd. of Trs. of the Wash. City Orphan Asylum, 798 A.2d 1068, 2002 D.C. App. LEXIS 111 (2002).

Court of Appeals reviews the trial court's ruling in admission of evidence under abuse of discretion and will reverse only if the exercise of discretion is clearly erroneous. Malloy v. United States, 797 A.2d 687, 2002 D.C. App. LEXIS 91 (2002).

In determining whether a prosecutor's unobjected-to remarks in closing argument amounted to plain error, the Court of Appeals considers whether the judge compromised the fundamental fairness of the trial, and permitted a clear miscarriage of justice, by not intervening, sua sponte, when the prosecutor made the challenged remarks. Crutchfield v. United States, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

Where defendant failed to object to prosecution's closing argument, Court of Appeals could consider only whether prosecution's alleged missteps therein amounted to plain error affecting substantial rights. Crutchfield v. United States, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

Under the plain error standard, the error must be: (1) obvious or readily apparent, and clear under current law, and (2) so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of the trial. Thomas v. United States, 772 A.2d 818, 2001 D.C. App. LEXIS 114 (2001), writ of certiorari denied by 543 U.S. 913, 125 S. Ct. 233, 160 L. Ed. 2d 193, 2004 U.S. LEXIS 6169, 73 U.S.L.W. 3214 (2004).

Appellate court will reverse under the plain error standard only in exceptional circumstances where a miscarriage of justice would otherwise result. Thomas v. United States, 772 A.2d 818, 2001 D.C. App. LEXIS 114 (2001), writ of certiorari denied by 543 U.S. 913, 125 S. Ct. 233, 160 L. Ed. 2d 193, 2004 U.S. LEXIS 6169, 73 U.S.L.W. 3214 (2004).

The determination of whether a probation violation has occurred is essentially a factual one and is therefore reviewed deferentially under the clearly erroneous standard. Johnson v. United States, 763 A.2d 707, 2000 D.C. App. LEXIS 297 (2000).

On appeals from bench trials, Court of Appeals reviews the trial judge's legal conclusions de novo, but treats his factual findings as presumptively correct unless they are clearly erroneous or unsupported by the record. Lawlor v. District of Columbia, 758 A.2d 964, 2000 D.C. App. LEXIS 206 (2000).

Defendant did not demonstrate plain error in eyewitness's testifying on redirect examination, after defendant first raised the matter on cross-examination, that he received collect calls from an inmate who told him not to testify against defendant in murder prosecution, where defense counsel made no objection to the redirect examination and never moved for a mistrial based on the phone calls. Parker v. United States, 757 A.2d 1280, 2000 D.C. App. LEXIS 198 (2000).

Appellate court cannot substitute its judgment for that of trial court where trial court's findings of fact are not clearly erroneous. Lake v. Lake, 756 A.2d 917, 2000 D.C. App. LEXIS 185 (2000).

Findings of fact, whether based on oral or documentary evidence, cannot be set aside on appeal unless clearly erroneous. D.C. Code 1981, § 17-305(a); Civil Rule 52(a). Murphy v. McCloud, 650 A.2d 202, 1994 D.C. App. LEXIS 227 (1994).

Trial court findings of fact are determinative during appellate review unless plainly wrong or without evidence to support them. D.C. Code 1981, § 17-305(a). Wheeler v. Goulart, 593 A.2d 173, 1991 D.C. App. LEXIS 169 (1991).

Issue is designated as question of fact, trial court's findings on which are accorded considerable deference and are reviewed under "clearly erroneous" standard, if issue involves the who, what, where, when, and how details of case, and thus the case specific historical, basic, primary, discrete, subsidiary or operative facts. D.C. Code 1981, § 17-305(a). Davis v. United

States, 564 A.2d 31, 1989 D.C. App. LEXIS 169 (1989).

A finding of fact by the trial court is subject to limited review and may be rejected only if clearly and manifestly wrong or without evidence to support it. D.C. Code 1981, § 17-305(a). Georgetown Entm't Corp. v. District of Columbia, 496 A.2d 587, 1985 D.C. App. LEXIS 448 (1985).

Trial court's findings of fact will not be set aside unless they are clearly erroneous. D.C. Code 1981, § 17-305(a); Civil Rule 52(a). Jackson v. Holder, 495 A.2d 746, 1985 D.C. App. LEXIS 440 (1985).

Where, in action by concrete subcontractor against concrete supplier for breaches of contract and warranty arising from delivery and use of defective concrete, trial judge's order made six specific findings before adopting subcontractor's proposed findings and conclusions, and judge chose not to adopt one portion of proposal that was inconsistent with his own findings, the findings and conclusions represented judge's own determinations, and thus the usual "clearly erroneous" standard of review applied. D.C. Code § 17-305(a). District Concrete Co. v. Bernstein Concrete Corp., 418 A.2d 1030, 1980 D.C. App. LEXIS 345 (1980).

Trial court's findings which are supported by the evidence and are not clearly erroneous are conclusive on appeal. D.C. Code SCR, Civil Rule 52(a); D.C. Code § 17-305(a). Max Holtzman, Inc. v. K & T Co., 375 A.2d 510, 1977 D.C. App. LEXIS 346 (1977).

Trial court's findings of fact may not be set aside on appeal where they are not plainly wrong or without evidence to support them. D.C. Code § 17-305(a). United States v. Warren, 373 A.2d 874, 1977 D.C. App. LEXIS 476 (1977).

In proceedings on motion to set aside default judgment, finding that showing made by marshal's return stating that defendant was personally served was not overcome was not clearly erroneous. D.C. Code § 17-305(a). Tribble v. American Mut. Ins. Co., 277 A.2d 659, 1971 D.C. App. LEXIS 330 (1971).

Evidence in suit by automobile purchaser for breach of warranty was insufficient to support finding that upper ball joints, replaced by garage not authorized by manufacturer, were defective, and finding was clearly erroneous. D.C. Code § 17-305(a). Ford Motor Co. v. Keating, 262 A.2d 600, 1970 D.C. App. LEXIS 232 (App. 1970).

Conclusiveness of trial court findings.

Reviewing court must accept the trial court's factual findings in connection with a claim of ineffective assistance of counsel unless they lack evidentiary support in the record, but reviews the trial court's legal determinations de novo. Otts v. United States, 952 A.2d 156, 2007 D.C. App. LEXIS 843 (2008).

Although the trial court need not give detailed reasons for its decision, for purposes of determining on appeal whether the trial court abused its discretion, there should be some indication that the court perceived the relevant salient factors' when exercising its discretion. Puckrein v. Jenkins, 884 A.2d 46, 2005 D.C. App. LEXIS 497 (2005).

A trial court's findings of fact can be reversed only if they are plainly wrong or without evidence to support them. Breezevale Ltd. v. Dickinson, 879 A.2d 957, 2005 D.C. App. LEXIS 412 (2005), writ of certiorari denied by 546 U.S. 1093, 126 S. Ct. 1053, 163 L. Ed. 2d 860, 2006 U.S. LEXIS 89 (2006).

Although the decision whether to vacate an order of dismissal for untimely service is clearly a matter of trial court discretion, this discretion is not unlimited; it is a fundamental principle of appellate deference to the exercise of discretion that it must be undertaken with a proper appreciation of all relevant factors, including the range of such discretion. Packheiser v. Miller, 875 A.2d 645, 2005 D.C. App. LEXIS 267 (2005).

Whether a common law marriage exists is largely a factual determination; thus, the Court of Appeals will affirm the trial court's findings regarding the existence of a common law marriage unless appellant can persuade the Court that the trial court's findings are plainly wrong or without evidence to support them. Packheiser v. Miller, 875 A.2d 645, 2005 D.C. App. LEXIS 267 (2005).

n reviewing bench trials, the Court of Appeals will not reverse unless an appellant has established that the trial court's findings are plainly wrong or without evidentiary support. Independence Mgmt. Co. v. Anderson & Summers, LLC, 874 A.2d 862, 2005 D.C. App. LEXIS 252 (2005).

When the trial court sits as fact-finder, its factual findings are accorded considerable deference and are reviewed under a "clearly erroneous" standard. Independence Mgmt. Co. v. Anderson & Summers, LLC, 874 A.2d 862, 2005 D.C. App. LEXIS 252 (2005).

The Court of Appeals' review of a trial court's determination of whether counsel was ineffective presents a mixed question of law and fact; it will accept the trial judge's factual findings unless they lack evidentiary support in the record, and on those facts the court will conduct a de novo review of the trial court's legal conclusions. Mercer v. United States, 864 A.2d 110, 2004 D.C. App. LEXIS 579 (2004), writ of certiorari denied by 543 U.S. 1188, 125 S. Ct. 1425, 161 L. Ed. 2d 191, 2005 U.S. LEXIS 2103, 73 U.S.L.W. 3513 (2005).

The Court of Appeals may affirm a judgment on any valid ground, even if that ground was

not relied upon by the trial judge or raised or considered in the trial court. In re Walker, 856 A.2d 579, 2004 D.C. App. LEXIS 407 (2004).

A trial court has broad latitude in ruling on a motion for new trial; therefore, the Court of Appeals reviews the trial court's decision to grant a new trial for an abuse of discretion. Faggins v. Fischer, 853 A.2d 132, 2004 D.C. App. LEXIS 293 (2004).

The trial court's factual findings are binding upon Court of Appeals, unless they are clearly erroneous, and evidence is viewed in the light most favorable to the prevailing party. Real Estate Escrow, Inc. v. Fitzgerald, 846 A.2d 289, 2004 D.C. App. LEXIS 155 (2004).

The Court of Appeals must, as a practical matter, conduct an independent review of record whenever trial court grants a motion to dismiss without issuing findings of fact or conclusions of law. Johnson v. Payless Shoe Source, Inc., 841 A.2d 1249, 2004 D.C. App. LEXIS 38 (2004).

When the trial court sits as fact-finder, its factual findings are accorded considerable deference and are reviewed under a clearly erroneous' standard. Saul Subsidiary II Ltd. P'ship v. Venator Group Specialty, Inc., 830 A.2d 854, 2003 D.C. App. LEXIS 534 (2003).

The Court of Appeals will not disturb a trial court's factual finding, unless the finding is plainly wrong or without facts to support it. Robinson v. United States, 825 A.2d 318, 2003 D.C. App. LEXIS 306 (2003).

When the trial court adopts the special master's findings, they are considered as the findings of the court, and on appeal such findings, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous. Fed. Mktg. Co. v. Va. Impression Prods. Co., 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Court of Appeals accords the trial court substantial deference in exercising its discretion in handling a sleeping juror because of the court's familiarity with the proceedings, its observations of the witnesses and lawyers and jurors, and its superior opportunity to get a feel for the case; court's own contemporaneous observations of the juror may negate the need to investigate further by enabling the court to take judicial notice that the juror was not asleep or was only momentarily and harmlessly so. Mateen Abdus Samad v. United States, 812 A.2d 226, 2002 D.C. App. LEXIS 720 (2002), writ of certiorari denied by 538 U.S. 934, 123 S. Ct. 1600, 155 L. Ed. 2d 333, 2003 U.S. LEXIS 2369, 71 U.S.L.W. 3610 (2003).

On appeal of a conviction for violation of a civil protection order, Court of Appeals must view the evidence in the light most favorable to sustaining the judgment; however, a question of law is presented as to whether defendant's acts violated the court order, and the trial court's resolution of that question is reviewed de novo. Ba v. United States, 809 A.2d 1178, 2002 D.C. App. LEXIS 600 (2002).

If a trial court's determination is plausible in light of the record viewed in its entirety, the Court of Appeals will not disturb it, whether or not it might have viewed the evidence differently itself. Hildreth Consulting Eng'Rs, P.C. v. Larry E. Knight, Inc., 801 A.2d 967, 2002 D.C. App. LEXIS 361 (2002).

Where the facts admit of more than one interpretation, an appellate court must defer to the trial court's judgment. Hildreth Consulting Eng'Rs, P.C. v. Larry E. Knight, Inc., 801 A.2d 967, 2002 D.C. App. LEXIS 361 (2002).

The appellate court, when considering claims of evidentiary insufficiency, recognizes the right of the fact-finder to weigh the evidence, resolve issues of credibility, and draw justifiable inferences of fact. Nowlin v. United States, 782 A.2d 288, 2001 D.C. App. LEXIS 208 (2001).

Court of Appeals defers to the fact finder's right to weigh the evidence, determine the credibility of witnesses, and draw inferences from the evidence presented. McCoy v. United States, 781 A.2d 765, 2001 D.C. App. LEXIS 211 (2001).

Court of Appeals does not distinguish between direct and circumstantial evidence when reviewing a sufficiency of the evidence claim. McCoy v. United States, 781 A.2d 765, 2001 D.C. App. LEXIS 211 (2001).

Judging the credibility of witnesses is the quintessential function of the finder of fact, a task reserved for the jury, not the Court of Appeals. McCoy v. United States, 781 A.2d 765, 2001 D.C. App. LEXIS 211 (2001).

Deference is due to the trial court's determination of child abuse or neglect, and the Court of Appeals will not second-guess the trial judge on a very difficult call. In re C.C.J, 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

The trial court's factual findings in a bench trial are binding upon the Court of Appeals unless they are clearly erroneous; if the findings are acceptable, the Court of Appeals will not disturb the trial court's judgment unless it is plainly wrong or without evidence to support it. Drevenak v. Abendschein, 773 A.2d 396, 2001 D.C. App. LEXIS 118 (2001).

The Court of Appeals will not sustain findings in which the trial court has rejected or failed to draw the inferences which the Court of Appeals finds inescapable from the record as a whole. In re E.D.R., 772 A.2d 1156, 2001 D.C. App. LEXIS 113 (2001).

Appellate court may not substitute itself for the trier of fact who heard, received and weighed the evidence. Murray v. District of Columbia Dep't of Empl. Servs., 765 A.2d 980, 2001 D.C. App. LEXIS 13 (2001).

Trial court's factual findings in connection with determination of sanction for party's fail-

ure to comply with discovery request, such as determination that police did not act in bad faith in destruction of evidence and were not grossly negligent, will not be disturbed unless those findings are plainly wrong or without facts to support them. Criminal Rule 16(d)(2); D.C. Code 1981, § 17-305(a). Davis v. United States, 641 A.2d 484, 1994 D.C. App. LEXIS 67 (1994), writ of certiorari denied by 514 U.S. 1028, 115 S. Ct. 1384, 131 L. Ed. 2d 237, 1995 U.S. LEXIS 2189, 63 U.S.L.W. 3690 (1995).

Determination by trial court regarding degree of negligence involved in loss of Jencks Act material is a finding of fact which will not be disturbed on appeal unless "clearly erroneous." D.C. Code 1981, § 17-305(a). Jones v. United States, 535 A.2d 409, 1987 D.C. App. LEXIS 512 (1987).

Court of Appeals' scope of review of trial court's finding that witness' consent to wiretap was involuntary was limited to determining whether finding was plainly wrong or without substantial support in the evidence. D.C. Code 1981, § 17-305(a). United States v. Sell, 487 A.2d 225, 1985 D.C. App. LEXIS 316 (1985).

Question on appeal from a judgment in a case tried to the court is not whether the Court of Appeals would have made the findings the trial court did, but whether on the entire evidence the Court of Appeals is left with a definite and firm conviction that a mistake has been committed. D.C. Code 1981, § 17-305(a); Civil Rules 52(a), 65(a)(2). Cahn v. Antioch University, 482 A.2d 120, 1984 D.C. App. LEXIS 453 (1984).

Court of Appeals may not set aside trial court's factual finding on prosecutorial intent to cause mistrial unless it is plainly erroneous or without evidence in the record to support it. D.C. Code 1981, § 17-305(a). Pennington v. United States, 471 A.2d 250, 1983 D.C. App. LEXIS 545 (1983).

Determinations on the issue of consent to a search are factual in nature and may not be reversed unless they are clearly erroneous. U.S. Const.Amend. 4; D.C. Code 1981, § 17-305(a). Welch v. United States, 466 A.2d 829, 1983 D.C. App. LEXIS 484 (1983).

Determination whether defendant's wife had sufficient authority over both their home and automobile to authorize searches of them was factual in nature and could not be reversed on appeal unless it was clearly erroneous. U.S.C. Const.Amend. 4; D.C. Code 1981, § 17-305(a). Welch v. United States, 466 A.2d 829, 1983 D.C. App. LEXIS 484 (1983).

When reviewing the decision of the trial court, which sat without a jury, the Court of Appeals may not set aside its judgment except for errors of law unless it appears that the judgment is plainly wrong or without evidence to support it. D.C. Code § 17-305(a). Nelson-Bey v. Robinson, 408 A.2d 999, 1979 D.C. App. LEXIS 505 (1979).

Court of Appeals, in making independent determination as to when an arrest occurred, is to give deference to trial court's findings of fact as to circumstances surrounding defendant's encounter with police. D.C. Code § 17-305. Giles v. United States, 400 A.2d 1051, 1979 D.C. App. LEXIS 345 (1979).

Although the Court of Appeals is generally hesitant to overturn factual findings of trial court, it has duty to do so when testimony adduced at trial does not provide substantial evidence to support findings. D.C. Code § 17-305. Edison v. Scott, 388 A.2d 1239, 1978 D.C. App. LEXIS 394 (1978).

In action to recover property damages sustained when car allegedly stolen from defendant allegedly sideswiped plaintiff's car, wherein trial court did not find negligence but simply stated that if there were negligence, it must have been because of way that defendant handled car keys, and, beyond that, "assumed" that keys were used to drive car, notwithstanding absence of any testimony in that regard, trial court's findings were not sufficiently clear for the Court of Appeals to decide case, requiring remand of case for further findings of fact and conclusions of law. D.C. Code § 17-305. Edison v. Scott, 388 A.2d 1239, 1978 D.C. App. LEXIS 394 (1978).

"Clearly erroneous" standard is appropriate measure by which to review trial court's conclusions both as to whether, by virtue of their contemporaneous and substantially verbatim qualities, requested material falls within reach of Jencks Act, and, if so, whether circumstances warrant imposition of any sanction for Government's failure to produce the document. 18 U.S.C. § 3500; D.C. Code § 17-305(a). March v. United States, 362 A.2d 691, 1976 D.C. App. LEXIS 324 (1976).

Findings of fact by trial court are conclusive on appeal unless plainly wrong or without evidence to support them. D.C. Code § 17-305(a). Lee Washington, Inc. v. Washington Motor Truck Transp. Employees Health & Welfare Trust, 310 A.2d 604, 1973 D.C. App. LEXIS 381 (1973).

Where trial court's findings of fact are supported by substantial evidence and are not clearly erroneous, they will be accepted on appeal. D.C. Code § 17-305(a). Julian W. Curtis Co. v. District-Realty Title Ins. Corp., 267 A.2d 830, 1970 D.C. App. LEXIS 317 (App. 1970).

Grounds for setting aside trial court judgment and orders.

In ruling on a defendant's motion for judgment of acquittal, Court must view the evidence in the light most favorable to the government giving full play to the right of the jury to determine credibility, weigh the evidence and

draw justifiable inferences of fact. United States v. Howard, 245 F.Supp.2d 24, 2003 U.S. Dist. LEXIS 1765 (2003).

Even if trial court erred in admitting testimony of social worker and foster mother of one of child's siblings that they had been told that mother's boyfriend was living in mother's home, which violated order placing child in mother's care under protective supervision, such error was harmless, in child neglect proceeding, as trial court explained that it was able to parse out what could be used in a motion to revoke protective supervision, and stated that it relied on statements of child and testimony of outreach worker and child's father in reaching its decision to revoke mother's protective supervision. In re N.D., 909 A.2d 165, 2006 D.C. App. LEXIS 546 (2006).

A litigant is entitled to have trial judge exercise discretion unfettered by erroneous legal thinking; where this has not occurred, Court of Appeals will ordinarily remand for reconsideration of ruling under the proper standard. Johnson v. Payless Shoe Source, Inc., 841 A.2d 1249, 2004 D.C. App. LEXIS 38 (2004).

Trial court's credibility determination in murder prosecution regarding contents of a conversation between defendant and his girlfriend, who was an attorney employed by federal government, and its factual finding that girlfriend was not acting as an attorney during that conversation would be upheld by appellate court in its review of attorney-client privilege claim unless those findings were plainly wrong or without evidence to support them. Jones v. United States, 828 A.2d 169, 2003 D.C. App. LEXIS 434 (2003), writ of certiorari denied by 540 U.S. 1166, 124 S. Ct. 1182, 157 L. Ed. 2d 1214, 2004 U.S. LEXIS 915, 72 U.S.L.W. 3487 (2004).

The standard by which an appellate court reviews a denial of a motion for judgment of acquittal is de novo. Guzman v. United States, 821 A.2d 895, 2003 D.C. App. LEXIS 221 (2003).

In reviewing a denial of a motion for judgment of acquittal, an appellate court determines whether the evidence, viewed in the light most favorable to the government, was such that a reasonable juror could find guilt beyond a reasonable doubt. Guzman v. United States, 821 A.2d 895, 2003 D.C. App. LEXIS 221 (2003).

Question of whether doctor, clinic for which he worked, and District of Columbia, which operated clinic, constituted a single tortfeasor or more than one or two tortfeasors, and thus the amount of contribution to which radiologist and his employer were entitled from joint tortfeasors, required remand in patient's malpractice action; jury found radiologist and employer were negligent, trial court made post-trial findings that doctor and District were also negligent, patient had settled with District and doctor prior to trial, and damages awarded at trial were twice the amount of the pre-trial settlement. Hubbard v. Chidel, 790 A.2d 558, 2002 D.C. App. LEXIS 23 (2002), remanded by 840 A.2d 689, 2004 D.C. App. LEXIS 3 (D.C. 2004).

Questions of whether radiologist, whose employer gave timely notice to District of Columbia of claim for contribution, was required to give the District separate notice, and whether a proper claim for contribution by radiologist and his employer against the District was before the trial court, required remand. Hubbard v. Chidel, 790 A.2d 558, 2002 D.C. App. LEXIS 23 (2002), remanded by 840 A.2d 689, 2004 D.C. App. LEXIS 3 (D.C. 2004).

Aim of Court of Appeals in assessing whether trial court error requires reversal must be to do substantial justice, and the court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties. Wagner v. Georgetown Univ. Med. Ctr., 768 A.2d 546, 2001 D.C. App. LEXIS 55 (2001).

In determining whether there was plain error through a prosecutor's engaging in improper closing argument, the Court of Appeals considers whether the judge compromised the fundamental fairness of the trial, and permitted a clear miscarriage of justice, by not intervening, sua sponte, when the prosecutor made the challenged remarks. Reyes v. United States, 758 A.2d 35, 2000 D.C. App. LEXIS 200 (2000), writ of certiorari denied by 534 U.S. 917, 122 S. Ct. 265, 151 L. Ed. 2d 193, 2001 U.S. LEXIS 6962, 70 U.S.L.W. 3242 (2001).

Court of Appeals reviews a trial court's denial of a motion for judgment of acquittal de novo, and like the trial court, determines whether the evidence, viewed in the light most favorable to the government, was such that a reasonable juror could find guilt beyond a reasonable doubt. Johnson v. United States, 756 A.2d 458, 2000 D.C. App. LEXIS 177 (2000).

Appellate court will reverse a conviction for insufficient evidence only if there is no evidence from which a reasonable mind might find the defendant guilty beyond a reasonable doubt. Johnson v. United States, 756 A.2d 458, 2000 D.C. App. LEXIS 177 (2000).

According equal weight to circumstantial evidence and direct evidence, it is only where the government has produced no evidence from which a reasonable mind might fairly infer guilt beyond a reasonable doubt that the Court of Appeals can reverse a conviction. Clark v. United States, 755 A.2d 1026, 2000 D.C. App. LEXIS 151 (2000).

Trial court ruling that Department of Finance and Revenue transmitted all records in its possession relevant to request under District of Columbia Freedom of Information Act

(D.C.-FOIA) was finding of fact that could not be set aside on appeal unless it was clearly erroneous or unsupported by any evidence in record. D.C. Code 1981, §§ 1-1521 to 1-1529, 17-305(a); Civil Rule 52(a). Donahue v. Thomas, 618 A.2d 601, 1992 D.C. App. LEXIS 296 (1992).

The Court of Appeals may set aside the trial court's judgment only if there is error of law or if the judgment is plainly wrong or without just evidence to support it. D.C. Code 1981, § 17-305(a). Williams v. United States, 576 A.2d 1339, 1990 D.C. App. LEXIS 144 (1990).

A judgment in a case tried to the court may be reviewed both as to the facts and the law, and unless it appears that the judgment is plainly wrong or without evidence to support it, it may not be set aside except for errors of law. D.C. Code 1981, § 17-305(a); Civil Rules 52(a), 65(a)(2). Cahn v. Antioch University, 482 A.2d 120, 1984 D.C. App. LEXIS 453 (1984).

Court of Appeals will reverse trial court's finding concerning existence of agency relationship only if finding is plainly wrong and without evidence to support it. D.C. Code 1981, § 17-305(a). Smith v. Jenkins, 452 A.2d 333, 1982 D.C. App. LEXIS 465 (1982).

On appeal, trial court's ruling will not be set aside except for errors of law unless it is plainly wrong or not supported by the evidence. D.C. Code § 17-305(a). Remco Business Systems, Inc. v. Hollowell, 430 A.2d 534, 1981 D.C. App. LEXIS 282 (1981).

Court of Appeals will set aside a trial court judgment that is without evidence to support it. D.C. Code § 17-305. Hagans Management Co. v. Nichols, 409 A.2d 179, 1979 D.C. App. LEXIS 503 (1979).

Resolution of conflicting evidence is within the province of the trial court and its findings, when supported by competent evidence, will not be set aside unless clearly erroneous. D.C. Code § 17-305(a). Johnson & Jenkins Funeral Home, Inc. v. District of Columbia, 318 A.2d 596, 1974 D.C. App. LEXIS 411 (1974).

Presumptions and burden of proof, generally.

A party seeking to set aside an arbitration award has a heavy burden. Motor City Drive, L.L.C. v. Brennan Beer Gorman Monk Architects & Interiors, P.L.L.C., 890 A.2d 233, 2006 D.C. App. LEXIS 8 (2006).

Public school teacher had the burden of proving that his retirement was involuntary, since a retirement request initiated by public employee was presumed to be a voluntary act. Bagenstose v. D.C. Office of Emple. Appeals, 888 A.2d 1155, 2005 D.C. App. LEXIS 639 (2005).

The judgment of the trial court is presumed to be correct, and it is incumbent upon the appellant to provide the court with a record which affirmatively shows that error occurred. In re E.T.A., 880 A.2d 264, 2005 D.C. App. LEXIS 415 (2005).

In order to obtain reversal, an appellant must show that he or she was prejudiced by the trial court's exclusion of witnesses from the courtroom during trial. Dean v. Garland, 779 A.2d 911, 2001 D.C. App. LEXIS 189 (2001), writ of certiorari denied by 536 U.S. 924, 122 S. Ct. 2591, 153 L. Ed. 2d 780, 2002 U.S. LEXIS 4497, 70 U.S.L.W. 3774 (2002).

In reviewing the trial court's denial of a motion to dismiss for failure to state a claim upon which relief can be granted, the Court of Appeals must construe the facts on the face of the complaint in the light most favorable to the non-moving party, and accept as true the allegations in the complaint. Finkelstein, Thompson & Loughran v. Hemispherx Biopharma, Inc., 774 A.2d 332, 2001 D.C. App. LEXIS 129 (2001).

Findings of fact are presumptively correct unless they are clearly erroneous or unsupported by the record. D.C. Code 1981, § 17-305(a). Auxier v. Kraisel, 466 A.2d 416, 1983 D.C. App. LEXIS 459 (1983).

Retrial.

Review of a grant of a new trial is limited to whether the trial court abused its discretion. Brown v. NAS, 844 A.2d 1113, 2004 D.C. App. LEXIS 71 (2004).

The judge who presided over the trial and had the opportunity to develop a "feel" for the case is in a superior position to that of an appellate court, with respect to a motion for new trial, to discern whether newly discovered evidence has any appreciable potential for affecting the jury's verdict. Whitley v. United States, 783 A.2d 629, 2001 D.C. App. LEXIS 227 (2001), modified by 796 A.2d 26, 2002 D.C. App. LEXIS 77 (D.C. 2002).

Absent a clear showing of abuse of discretion, decisions of the trial court regarding the denial of a new trial will not be disturbed on appeal. Whitley v. United States, 783 A.2d 629, 2001 D.C. App. LEXIS 227 (2001), modified by 796 A.2d 26, 2002 D.C. App. LEXIS 77 (D.C. 2002).

Appellate court's review of a grant of a new trial is limited to whether the trial court abused its discretion. Whitley v. United States, 783 A.2d 629, 2001 D.C. App. LEXIS 227 (2001), modified by 796 A.2d 26, 2002 D.C. App. LEXIS 77 (D.C. 2002).

Where conviction itself triggered revocation of probation for prior offense, which would have occurred without regard to length of appeal from conviction for current offense, court could not conclude that defendant was prejudiced from incarceration based upon mere speculative disability that, had there been more rapid appellate process, defendant could have expected retrial and release, if acquitted, before

date when he was actually paroled, and thus trial court's finding of prejudice was insufficiently supported. D.C. Code §§ 17-305(a), 23-1321, 24-204, 24-205, 24-206; U.S. Const. Amend. 5. United States v. Alston, 412 A.2d 351, 1980 D.C. App. LEXIS 231 (1980).

Emotional distress, when derived primarily from lengthy period of appellate deliberation, does not alone constitute prejudice sufficient to offend due process and cannot be related to constitutional guaranty of fair retrial. 18 U.S.C. §§ 5006(d), 5010; D.C. Code § 17-305(a); U.S. Const. Amends. 5, 6. United States v. Alston, 412 A.2d 351, 1980 D.C. App. LEXIS 231 (1980).

Right to review.

— Parties entitled to allege error.

Ward failed to preserve for appeal his argument for successor guardian's removal, where the ward never pressed the trial court for a ruling on his complaint for removal and failed to seek removal based on a statutory right. In re Estate of Greene, 851 A.2d 418, 2004 D.C. App. LEXIS 269 (2004).

Brewery owner waived appellate review of jury instructions on implied-in-fact quantum meruit recovery, where owner boycotted the trial and therefore did not object at trial to the instructions. Fischer v. Estate of Flax, 816 A.2d 1, 2003 D.C. App. LEXIS 19 (2003), remanded by 935 A.2d 362, 2007 D.C. App. LEXIS 659 (D.C. 2007), remanded by 935 A.2d 1091, 2007 D.C. App. LEXIS 669 (D.C. 2007).

Appeals by those who participated as if parties may be entertained despite a failure to achieve formal status as a party. In re Orshansky, 804 A.2d 1077, 2002 D.C. App. LEXIS 488 (2002).

Niece had standing to appeal appointment of guardian and conservator for aunt, even though niece was not a party to intervention proceeding in name; niece made motions and arguments, niece presented evidence, niece cross-examined witnesses, probate court directed its orders at niece by name, and probate court informed niece that she could appeal. In re Orshansky, 804 A.2d 1077, 2002 D.C. App. LEXIS 488 (2002).

Court of Appeals would decline to consider plaintiff's claim that misconduct committed by defendants and their counsel was so egregious and pervasive as to irreversibly taint lower court proceedings and significantly prejudice plaintiff's rights, where plaintiff failed to raise claim in trial court. Wallace v. Skadden, Arps, Slate, Meagher & Flom LLP, 799 A.2d 381, 2002 D.C. App. LEXIS 296 (2002).

Whether appellants have standing is a question of law which the appellate court considers on appeal de novo. Bd. of Dirs. of the Wash. City Orphan Asylum v. Bd. of Trs. of the Wash. City Orphan Asylum, 798 A.2d 1068, 2002 D.C. App. LEXIS 111 (2002).

In reviewing trial court's denial or grant of motion to suppress evidence, Court of Appeals' review is de novo. (Per Sullivan, J., with one Judge concurring in judgment.) D.C. Code 1981, § 17-305(a). Powell v. United States, 649 A.2d 1082, 1994 D.C. App. LEXIS 221 (1994).

Defendant could not argue that trial court abused its discretion in admitting into evidence witness's sworn grand jury testimony because witness was not "unavailable" for purpose of prior recorded testimony exception to hearsay rule, where defendant herself requested admission of the evidence. D.C. Code 1981, § 17-305. Kimes v. United States, 569 A.2d 104, 1989 D.C. App. LEXIS 220 (1989).

— Prosecution, right to review.

Evidence supported trial judge's determination that trial had begun when Government proffered exhibits and records as evidence in Government's case against defendants and thus trial judge's subsequent ruling that pertinent regulation adopted by city council was defective and could not be used in support of prosecution was an appealable ruling made during trial under statute providing that United States or District of Columbia may appeal ruling made during trial. D.C. Code §§ 17-305(a), 23-104(d). United States v. Lowery, 382 A.2d 1007, 1977 D.C. App. LEXIS 301 (1977).

Rights of indigents.

All requests for free transcript must first be made to trial judge who may appropriately keep in mind that any parts of trial proceedings unnecessary to resolution on appeal of discernible substantial questions should not be ordered. D.C. Code § 17-305(a). McKelton v. Bruno, 264 A.2d 493, 1970 D.C. App. LEXIS 275 (App. 1970).

Scope of review.

— Administrative proceedings, scope of review.

In general, an agency's interpretation of its own regulation is controlling unless plainly erroneous or inconsistent with the regulation; however, such deference is warranted only when the language of the regulation is ambiguous. Barrick Goldstrike Mines, Inc. v. Whitman, 260 F.Supp.2d 28, 2003 U.S. Dist. LEXIS 13158 (2003).

The substantial evidence test is satisfied only when an administrative agency fully and clearly explains its decision and demonstrates a rational connection between the facts found and the choice made. Eagle Maint. Servs. v. D.C. Contract Appeals Bd., 893 A.2d 569, 2006 D.C. App. LEXIS 88 (2006).

The Court of Appeals will defer to an agency's construction of a statute it is charged with administering as long as that construction enhances the general purposes and policies underlying the statute. Office of the People's Counsel v. PSC of D.C., 889 A.2d 1003, 2006 D.C. App. LEXIS 1 (2006).

The Court of Appeals will affirm an agency's decision if it is satisfied that the agency engaged in reasonable analysis in coming to its decision. Office of the People's Counsel v. PSC of D.C., 889 A.2d 1003, 2006 D.C. App. LEXIS 1 (2006).

The Court of Appeals must affirm the Public Service Commission's (PSC) order if it was based upon substantial evidence. Office of the People's Counsel v. PSC of D.C., 889 A.2d 1003, 2006 D.C. App. LEXIS 1 (2006).

Court of Appeals reviews a Superior Court ruling on an Office of Employee Appeals (OEA) decision in the same fashion in which Court of Appeals would review an OEA decision if it were appealable directly to Court of Appeals. Bagenstose v. D.C. Office of Emple. Appeals, 888 A.2d 1155, 2005 D.C. App. LEXIS 639 (2005).

Although District of Columbia's appeal in matter arising from discharge of civilian employee of Metropolitan Police Department (MPD) came to the Court of Appeals from the trial court, Court of Appeals would review order of the Office of Employee Appeals (OEA) as though the appeal had been taken directly to the Court of Appeals, examining the agency record to determine whether there was substantial evidence to support OEA's findings of fact, and whether OEA's action was arbitrary, capricious, or an abuse of discretion. District of Columbia v. D.C. Office of Emple. Appeals, 883 A.2d 124, 2005 D.C. App. LEXIS 486 (2005).

If appellate court concludes that there was substantial evidence to support the Police and Firefighters' Retirement and Relief Board's findings, appellate court may not substitute its judgment for the Board's even though there may also be substantial evidence in the record to support a contrary finding. Pierce v. D.C. Police & Firefighters' Ret. & Relief Bd., 882 A.2d 199, 2005 D.C. App. LEXIS 466 (2005).

Appellate court defers to the Police and Firefighters' Retirement and Relief Board's reasonable interpretation of the law it is charged with implementing, and must accept its findings if, upon review of the entire record, they are supported by substantial evidence. Pierce v. D.C. Police & Firefighters' Ret. & Relief Bd., 882 A.2d 199, 2005 D.C. App. LEXIS 466 (2005).

Appellate court's review of Police and Firefighters' Retirement and Relief Board's decision is narrowly confined to ensuring that the Board (1) made findings of fact on each material, contested factual issue, (2) based those findings on substantial evidence, and (3) drew conclusions of law which followed rationally from the findings. Pierce v. D.C. Police & Firefighters' Ret. & Relief Bd., 882 A.2d 199, 2005 D.C. App. LEXIS 466 (2005).

While it is the Office of Employee Appeals' (OEA) final decision and not that of the administrative law judge (ALJ) that may be reviewed by Court of Appeals, the ALJ's findings of fact are binding at all subsequent levels of review unless they are not supported by substantial evidence. D.C. Dep't of Pub. Works v. Colbert, 874 A.2d 353, 2005 D.C. App. LEXIS 211 (2005).

Even though the case was on appeal from the Superior Court's ruling setting aside order of the Board of the Office of Employee Appeals, affirming employer's decision to discharge department of public works employee, Court of Appeals would review the decision of the Board as if the appeal had been taken directly to the Court of Appeals, and thus, Court of Appeals would examine the agency record to determine whether there was substantial evidence to support Board's findings of fact and whether Board's action was arbitrary, capricious, or an abuse of discretion. D.C. Dep't of Pub. Works v. Colbert, 874 A.2d 353, 2005 D.C. App. LEXIS 211 (2005).

Issue of authority of a District of Columbia Department of Health (DOH) administrative law judge (ALJ) to order the important remedy of readmission of a patient who was discharged from Medicaid- and Medicare-certified nursing facility upon faulty notice involved overarching issues important to resolution of an entire class of future cases, such that Court of Appeals would consider issue, even if issue was moot because all that patient sought from ALJ was a declaration of the "right" to be readmitted to facility in the future. Paschall v. D.C. Dep't of Health, 871 A.2d 463, 2005 D.C. App. LEXIS 151 (2005).

Court of Appeals must examine the administrative record to determine whether there has been procedural error, whether there is substantial evidence in the record to support the Office of Employee Appeals (OEA) findings, or whether the OEA's action was in some manner otherwise arbitrary, capricious, or an abuse of discretion. District of Columbia v. Fremeau, 869 A.2d 711, 2005 D.C. App. LEXIS 45 (2005).

Court of Appeals reviews the Office of Employee Appeals' (OEA) decision directly. District of Columbia v. Fremeau, 869 A.2d 711, 2005 D.C. App. LEXIS 45 (2005).

When reviewing an agency interpretation of a statute it administers, the Court of Appeals ordinarily gives considerable deference to such an interpretation as well as to the agency's own regulations and decisions. Majerle Mgmt. v. D.C. Rental Hous. Comm'n, 866 A.2d 41, 2004 D.C. App. LEXIS 698 (2004).

Court of Appeals will uphold an agency's decision if it is based upon "substantial evidence," which means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

In reviewing an agency decision, appellate court must consider: (1) whether the agency made a finding of fact on each material contested issue of fact; (2) whether substantial evidence in the record supports each finding; and (3) whether the conclusions of law follow rationally from the findings. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

An administrative order can only be sustained on the grounds relied on by the agency. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 862 A.2d 387, 2004 D.C. App. LEXIS 630 (2004).

Appellate court will affirm the agency's findings of fact as long as they are supported by substantial evidence, notwithstanding that there may be contrary evidence in the record. Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs., 859 A.2d 1058, 2004 D.C. App. LEXIS 514 (2004).

In reviewing an administrative decision, appellate court defers to factual findings of the agency as long as there is substantial evidence to support them. Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs., 859 A.2d 1058, 2004 D.C. App. LEXIS 514 (2004).

Although the Court of Appeals has adopted a flexible approach that rejects any rigid threshold requirement of competent corroborating evidence, administrative findings and conclusions based exclusively on hearsay are subject to exacting scrutiny, and reversal may be warranted if an agency places undue confidence in hearsay evidence that is too unreliable to justify the weight given to it. Compton v. D.C. Bd. of Psychology, 858 A.2d 470, 2004 D.C. App. LEXIS 456 (2004).

Court of Appeals' deference to decision of director of Department of Employment Services (DOES) in workers' compensation proceeding extends to matters of statutory interpretation, yielding only where director's reasoning is unreasonable in light of language of statute, legislative history, or judicial precedent. Compton v. D.C. Bd. of Psychology, 858 A.2d 470, 2004 D.C. App. LEXIS 456 (2004).

In workers' compensation case, Court of Appeals defers to determination of director of Department of Employment Services (DOES) as long as: (1) director's decision states findings of fact on each material, contested, factual issue; (2) those findings are based on substantial evidence in record; and (3) conclusions of law flow rationally from facts. Compton v. D.C. Bd. of Psychology, 858 A.2d 470, 2004 D.C. App. LEXIS 456 (2004).

An agency decision must not be disturbed unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. Orius Telcoms., Inc. v. D.C. Dep't of Empl. Servs., 857 A.2d 1061, 2004 D.C. App. LEXIS 417 (2004).

Court of Appeals' review of decision by director of Department of Employment Services in workers' compensation case is generally restrained. Orius Telcoms., Inc. v. D.C. Dep't of Empl. Servs., 857 A.2d 1061, 2004 D.C. App. LEXIS 417 (2004).

The Court of Appeals will not disturb an agency ruling as long as the decision flows rationally from the facts, and the facts are supported by substantial evidence in the record. Providence Hosp. v. D.C. Dep't of Empl. Servs., 855 A.2d 1108, 2004 D.C. App. LEXIS 406 (2004).

The Court of Appeals must affirm an agency decision unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Providence Hosp. v. D.C. Dep't of Empl. Servs., 855 A.2d 1108, 2004 D.C. App. LEXIS 406 (2004).

The Court of Appeals review of administrative agency decisions is limited. Providence Hosp. v. D.C. Dep't of Empl. Servs., 855 A.2d 1108, 2004 D.C. App. LEXIS 406 (2004).

In general, the Court of Appeals reviews an agency decision only to determine whether it is arbitrary, capricious, an abuse of discretion, or otherwise contrary to law. Felicity'S, Inc. v. D.C. Bd. of Appeals & Review, 851 A.2d 497, 2004 D.C. App. LEXIS 317 (2004).

The function of the court in reviewing administrative action is to assure that the agency has given full and reasoned consideration to all material facts and issues, but the court can perform this function only when the agency discloses the basis of its order by an articulation with reasonable clarity of its reasons for the decision. Felicity'S, Inc. v. D.C. Bd. of Appeals & Review, 851 A.2d 497, 2004 D.C. App. LEXIS 317 (2004).

An agency's findings will be left undisturbed if they are supported by substantial evidence in the record as a whole, even if contrary evidence also exists in the record. Felicity'S, Inc. v. D.C. Bd. of Appeals & Review, 851 A.2d 497, 2004 D.C. App. LEXIS 317 (2004).

Where an initial factual determination is made by an administrative agency acting in a non-adjudicative enforcement capacity, due process requires that the person whose rights are affected be able to obtain de novo review by a neutral adjudicator; under this de novo review, the enforcement agency determination does not benefit automatically from a presumption in its favor. Felicity'S, Inc. v. D.C. Bd. of

Appeals & Review, 851 A.2d 497, 2004 D.C. App. LEXIS 317 (2004).

Although the reviewing court is vested with the final authority on issues of statutory construction, it must defer to an agency's interpretation of the statute and implementing regulations which it administers, so long as that interpretation is reasonable and consistent with the statutory language. Mullin v. D.C. Rental Hous. Comm'n, 844 A.2d 1138, 2004 D.C. App. LEXIS 65 (2004), writ of certiorari denied by 543 U.S. 1006, 125 S. Ct. 615, 160 L. Ed. 2d 468, 2004 U.S. LEXIS 7782, 73 U.S.L.W. 3322 (2004).

The Court of Appeals accords great weight to the construction of a government contract by the District of Columbia Contract Appeals Board (CAB), so long as that construction is not unreasonable. Abadie v. D.C. Contract Appeals Bd., 843 A.2d 738, 2004 D.C. App. LEXIS 60 (2004).

Given the expertise of the District of Columbia Contract Appeals Board (CAB), the Court of Appeals gives careful consideration to the CAB's interpretation of its governing statute because legal interpretations by tribunals having expertise are helpful even if not compelling. Abadie v. D.C. Contract Appeals Bd., 843 A.2d 738, 2004 D.C. App. LEXIS 60 (2004).

Administrative order can only be sustained on grounds relied on by agency; Court of Appeals cannot substitute its judgment for that of agency. Kralick v. D.C. Dep't of Empl. Servs., 842 A.2d 705, 2004 D.C. App. LEXIS 57 (2004).

Court of Appeals applies three-part test when reviewing administrative decision under substantial evidence standard: (1) decision must state findings of fact on each material, contested factual issue; (2) those findings must be based on substantial evidence; and (3) conclusions of law must follow rationally from findings. Kralick v. D.C. Dep't of Empl. Servs., 842 A.2d 705, 2004 D.C. App. LEXIS 57 (2004).

The mere existence of substantial evidence contrary to the agency's factual findings does not allow the reviewing court to substitute its judgment for that of the agency. Kralick v. D.C. Dep't of Empl. Servs., 842 A.2d 705, 2004 D.C. App. LEXIS 57 (2004).

The reviewing court will not disturb an agency decision if it rationally flows from the factual findings on which it is based and if those findings are supported by substantial evidence. Kralick v. D.C. Dep't of Empl. Servs., 842 A.2d 705, 2004 D.C. App. LEXIS 57 (2004).

Recognizing agency expertise, the Court of Appeals accords great weight to any reasonable construction of a statute by the agency charged with its administration. Mills v. D.C. Dep't of Empl. Servs., 838 A.2d 325, 2003 D.C. App. LEXIS 751 (2003).

Reviewing court will defer to an agency's interpretation of a statute that it administers so long as it is not plainly wrong or inconsistent with the legislature's intent. UPS v. D.C. Dep't of Empl. Servs., 834 A.2d 868, 2003 D.C. App. LEXIS 627 (2003).

Appellate court accords great weight to any reasonable construction of regulatory statute by agency charged with its administration. UPS v. D.C. Dep't of Empl. Servs., 834 A.2d 868, 2003 D.C. App. LEXIS 627 (2003).

Court of Appeals generally accords great deference to the agency's interpretation of its own regulations, so long as that interpretation is reasonable and consistent with the statutory language, and it leaves an agency's decision undisturbed if it flows rationally from findings of fact that are supported by substantial evidence in the record. UPS v. D.C. Dep't of Empl. Servs., 834 A.2d 868, 2003 D.C. App. LEXIS 627 (2003).

If, after examining the record as a whole, Court of Appeals concludes that the agency's findings are supported by substantial evidence, it must accept those findings even though the record could support a contrary finding. UPS v. D.C. Dep't of Empl. Servs., 834 A.2d 868, 2003 D.C. App. LEXIS 627 (2003).

Court of Appeal's review of administrative orders is two-fold: (1) it reviews the factual findings of the agency to determine if there is substantial evidence to support them, and (2) it conducts a de novo review of an agency's legal conclusions. UPS v. D.C. Dep't of Empl. Servs., 834 A.2d 868, 2003 D.C. App. LEXIS 627 (2003).

In reviewing an administrative agency's construction of a statute, reviewing court accords great deference to the interpretation of the agency charged with its administration, particularly if the interpretation is of long standing and has been consistently applied; less deference is appropriate where interpretation lacks these attributes. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 832 A.2d 1267, 2003 D.C. App. LEXIS 570 (2003).

When reviewing an agency decision on appeal, appellate court inquires: (1) whether the agency has made a finding of fact on each material contested issue of fact; (2) whether substantial evidence of record supports each finding; and (3) whether conclusions legally sufficient to support the decision flow rationally from the findings. Lincoln Hockey, LLC v. D.C. Dep't of Empl. Servs., 831 A.2d 913, 2003 D.C. App. LEXIS 552 (2003).

Credibility determinations of a hearing examiner are accorded special deference by the appellate court. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 830 A.2d 865, 2003 D.C. App. LEXIS 537 (2003), remanded by 979 A.2d 1226, 2009 D.C. App. LEXIS 451, 29 I.E.R. Cas. (BNA) 1233 (D.C. 2009).

Appellate court's review of decisions of administrative agencies is limited to determining

whether the order is in accordance with law and supported by substantial evidence in the record. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 830 A.2d 865, 2003 D.C. App. LEXIS 537 (2003), remanded by 979 A.2d 1226, 2009 D.C. App. LEXIS 451, 29 I.E.R. Cas. (BNA) 1233 (D.C. 2009).

Appellate court must affirm an agency decision unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 830 A.2d 865, 2003 D.C. App. LEXIS 537 (2003), remanded by 979 A.2d 1226, 2009 D.C. App. LEXIS 451, 29 I.E.R. Cas. (BNA) 1233 (D.C. 2009).

Appellate court defers to the determination of the Director of Department of Employment Services (DOES) as long as the Director's decision flows rationally from the facts, and those facts are supported by substantial evidence in the record. Georgetown Univ. v. D.C. Dep't of Empl. Servs., 830 A.2d 865, 2003 D.C. App. LEXIS 537 (2003), remanded by 979 A.2d 1226, 2009 D.C. App. LEXIS 451, 29 I.E.R. Cas. (BNA) 1233 (D.C. 2009).

The Court of Appeals defers to an administrative agency's interpretation of the statute that it administers if that interpretation is a reasonable one in light of the language of the statute and its legislative history. Bio-Medical Applications of the Dist. of Columbia v. D.C. Bd. of Appeals & Review, 829 A.2d 208, 2003 D.C. App. LEXIS 479 (2003).

The Court of Appeals' review of the decision of the Board of Appeals and Review (BAR) is limited; as with other administrative agencies, the Court will inquire whether the BAR (1) made findings of fact on each material, contested factual issue, (2) based those findings on substantial evidence, and (3) drew conclusions of law which followed rationally from the findings. Bio-Medical Applications of the Dist. of Columbia v. D.C. Bd. of Appeals & Review, 829 A.2d 208, 2003 D.C. App. LEXIS 479 (2003).

The Court of Appeals gives great deference to an agency's interpretations of the statute it administers and of its own regulations, so long as such interpretations are not plainly erroneous or inconsistent with the statute or regulation. Bio-Medical Applications of the Dist. of Columbia v. D.C. Bd. of Appeals & Review, 829 A.2d 208, 2003 D.C. App. LEXIS 479 (2003).

Court of Appeals reviews decisions of the District of Columbia Contract Appeals Board deferentially. Belcon Inc. v. D.C. Water & Sewer Auth., 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

Evidence supporting a decision of the District of Columbia Contract Appeals Board is "substantial," for purposes of review on appeal, when a reasonable mind might accept it as adequate to support a conclusion. Belcon Inc. v. D.C. Water & Sewer Auth., 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

So long as a finding of the District of Columbia Contract Appeals Board is supported by substantial evidence, the Court of Appeals must accept it, even though there may also be substantial evidence in the record to support a contrary finding. Belcon Inc. v. D.C. Water & Sewer Auth., 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

Court of Appeals accords "great weight" to the District of Columbia Contract Appeals Board's construction of a government contract, so long as that construction is not unreasonable. Belcon Inc. v. D.C. Water & Sewer Auth., 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

Upon review of an administrative decision, deference is properly accorded an agency's interpretation of the administrative regulation it enforces unless it is plainly erroneous or inconsistent with the regulation. Belcon Inc. v. D.C. Water & Sewer Auth., 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

Court's review generally is limited to ensuring that an agency (1) made findings of fact on each material, contested factual issue, (2) based those findings on substantial evidence, and (3) drew conclusions of law which followed rationally from the findings. Belcon Inc. v. D.C. Water & Sewer Auth., 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

Administrative order can only be sustained on appeal on the grounds relied on by the agency. Belcon Inc. v. D.C. Water & Sewer Auth., 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

Unless the Alcoholic Beverage Control Board has committed an error of law, the Court of Appeals will overturn its decision only if it is unsupported by substantial evidence. Tiger Wyk Ltd. v. D.C. Alcoholic Bev. Control Bd., 825 A.2d 303, 2003 D.C. App. LEXIS 292 (2003).

The Court of Appeals' task when determining whether substantial evidence supports agency decision is to assess the logical connection between the evidence and conclusions, but not to substitute its judgment for that of the administrative agency. Tiger Wyk Ltd. v. D.C. Alcoholic Bev. Control Bd., 825 A.2d 303, 2003 D.C. App. LEXIS 292 (2003).

The Court of Appeals examines the entire administrative record, not just a portion of it, in considering whether an agency decision is supported by substantial evidence. Tiger Wyk Ltd. v. D.C. Alcoholic Bev. Control Bd., 825 A.2d 303, 2003 D.C. App. LEXIS 292 (2003).

The Court of Appeals was required to examine the record of the first hearing, as well as the second hearing on reconsideration, to determine whether the Alcoholic Beverage Control Board's decision to deny application to transfer license had sufficient evidentiary support. Ti-

ger Wyk Ltd. v. D.C. Alcoholic Bev. Control Bd., 825 A.2d 303, 2003 D.C. App. LEXIS 292 (2003).

When an administrative agency decision is based upon a material misconception of the law, the Court of Appeals will reject it. Moore v. D.C. Dep't of Empl. Servs., 813 A.2d 227, 2002 D.C. App. LEXIS 734 (2002).

The Court of Appeals generally defers to an administrative agency's interpretation of the statute and regulations it administers unless its interpretation is unreasonable or is contradicted by the specific language of the law or its legislative history. Moore v. D.C. Dep't of Empl. Servs., 813 A.2d 227, 2002 D.C. App. LEXIS 734 (2002).

The Court of Appeals defers to an agency's interpretation of its own regulations unless plainly erroneous or inconsistent with the regulations; therefore, absent some compelling indication that the interpretation is erroneous, the Court is bound by the agency's construction of its own regulations. Moore v. D.C. Dep't of Empl. Servs., 813 A.2d 227, 2002 D.C. App. LEXIS 734 (2002).

Although the initial review of the decision of the District of Columbia Office of Employee Appeals (OEA) was in superior court, on appeal the Court of Appeals' scope of review was precisely the same as in administrative appeals coming to the Court directly. Moore v. D.C. Dep't of Empl. Servs., 813 A.2d 227, 2002 D.C. App. LEXIS 734 (2002).

The Court of Appeals reviews decisions of the Department of Employment Services (DOES) in workers' compensation cases based on the substantial evidence standard; the Court must affirm if the Director's factual determinations are based on substantial evidence. Epstein, Becker & Green v. D.C. Dep't of Empl. Servs., 812 A.2d 901, 2002 D.C. App. LEXIS 742 (2002), remanded by 850 A.2d 1140, 2004 D.C. App. LEXIS 272 (D.C. 2004).

On issues of statutory construction, the Court of Appeals defers to the agency's interpretation unless it is plainly wrong or inconsistent with the legislative intent; however, where the statutory requirement has been judicially created, review is considerably less constrained. Mergentime Perini v. D.C. Dep't of Empl. Servs., 810 A.2d 901, 2002 D.C. App. LEXIS 670 (2002).

Court of Appeals' review of administrative decisions of the Police and Firefighters' Retirement and Relief Board is limited to ensuring that the Board made findings of fact on each material, contested factual issue, based those findings on substantial evidence, and drew conclusions of law which followed rationally from the findings. Mergentime Perini v. D.C. Dep't of Empl. Servs., 810 A.2d 901, 2002 D.C. App. LEXIS 670 (2002).

If supported by substantial evidence, Court of Appeals must accept the Police and Firefighters' Retirement and Relief Board's factual findings, even if Court might have reached a different result if acting as fact finder; in applying this substantial evidence test, Court may not substitute its judgment for that of the Board. Mergentime Perini v. D.C. Dep't of Empl. Servs., 810 A.2d 901, 2002 D.C. App. LEXIS 670 (2002).

The Court of Appeals reviews the legal rulings of the Director of the Department of Employment Services (DOES) in a workers' compensation matter de novo, but otherwise defers to the Director's determination so long as it rationally flows from the facts and is supported by substantial evidence on the record. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

The decision of the Director of the Department of Employment Services (DOES) that employer's evidence was insufficient to rebut the presumption of compensability presented a question of law that the Court of Appeals would review de novo, which in turn depended on an issue of interpretation of the evidence, as to which the Court defers. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

In general, the Court of Appeals reviews an agency decision only to determine whether it is arbitrary, capricious, an abuse of discretion, or otherwise contrary to law. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

In reviewing an agency interpretation of a statute, reviewing court follows the two-part test set out in Chevron: (1) reviewing court must determine whether the meaning of the statute is clear, and if it is, that is the end of the matter; but (2) if the statute is ambiguous, reviewing court must defer to the agency's interpretation of the statutory language so long as it is reasonable. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

Reviewing court affirms an agency decision unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

Agency decision will be sustained unless it is unsupported by substantial evidence in the record as a whole, and substantial evidence is more than a mere scintilla and constitutes such relevant evidence which a reasonable mind might accept as adequate to support a conclusion. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

If substantial evidence exists, reviewing court may not substitute its judgment for that

of the agency. Safeway Stores, Inc. v. D.C. Dep't of Empl. Servs., 806 A.2d 1214, 2002 D.C. App. LEXIS 534 (2002).

The Court of Appeals accords great deference to an agency's interpretation of its own administrative regulations and will uphold that construction unless clearly erroneous or inconsistent with the regulations. Sisson v. D.C. Bd. of Zoning Adjustment, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

Court of Appeals must defer to the interpretation by the Board of Elections and Ethics of the statute which the Board administers so long as that interpretation is not plainly wrong or inconsistent with the legislative purpose. Williams v. D.C. Bd. of Elections & Ethics, 804 A.2d 316, 2002 D.C. App. LEXIS 439 (2002).

Court of Appeals must accept findings of fact by the Board of Elections and Ethics so long as they are supported by substantial evidence on the record as a whole. Williams v. D.C. Bd. of Elections & Ethics, 804 A.2d 316, 2002 D.C. App. LEXIS 439 (2002).

When an agency's decision is based on an interpretation of the statute and regulations which it administers, Court of Appeals will uphold that interpretation as long as it is not unreasonable or contrary to the language or legislative history of the statute. McKenzie v. D.C. Dep't of Human Servs., 802 A.2d 356, 2002 D.C. App. LEXIS 377 (2002).

Court of Appeals must uphold Department of Human Services' (DHS) decision on Medicaid eligibility if the findings of fact are supported by substantial evidence in the record considered as a whole and the conclusions of law flow rationally from these findings. McKenzie v. D.C. Dep't of Human Servs., 802 A.2d 356, 2002 D.C. App. LEXIS 377 (2002).

While Court of Appeals does not give the Public Service Commission's (PSC) legal conclusion the same deference owed factual determinations, it nonetheless will sustain conclusion if it is reasonable and based upon factors within the PSC's expertise. Office of the People's Counsel v. PSC, 799 A.2d 376, 2002 D.C. App. LEXIS 297 (2002).

When reviewing Public Service Commission's (PSC) legal determinations with respect to matters within its specialized competence, Court of Appeals must be appropriately deferential. Office of the People's Counsel v. PSC, 799 A.2d 376, 2002 D.C. App. LEXIS 297 (2002).

In general, Court of Appeals defers to Public Service Commission's (PSC) construction of a statute it is charged with administering, so long as that construction enhances the general purposes and policies underlying the statute. Office of the People's Counsel v. PSC, 799 A.2d 376, 2002 D.C. App. LEXIS 297 (2002).

In reviewing an agency's decision, the Court of Appeals must sustain its findings unless they are unsupported by substantial evidence in the record of the proceedings; however, the Court will not disturb the agency's decision if it flows rationally from the facts which are supported by substantial evidence in the record. Union Light & Power Co. v. D.C. Dep't of Empl. Servs., 796 A.2d 665, 2002 D.C. App. LEXIS 85 (2002).

The Court of Appeals will not disturb an agency decision if it rationally flows from the factual findings on which it is based and if those findings are supported by substantial evidence in the record. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

Credibility determinations of a hearing examiner are accorded special deference by the Court of Appeals. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

The mere existence of evidence contrary to a hearing examiner's findings even if substantial does not permit the Court of Appeals to substitute its judgment for that of the agency. Landesberg v. D.C. Dep't of Empl. Servs., 794 A.2d 607, 2002 D.C. App. LEXIS 72 (2002).

The Court of Appeals must affirm an agency decision unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. White v. D.C. Dep't of Empl. Servs., 793 A.2d 1255, 2002 D.C. App. LEXIS 63 (2002).

Court of Appeals will ordinarily defer to an agency's reasonable interpretation of the statute that it administers; to receive such deference, however, agency's interpretation must reflect the careful legal and policy analysis required in making choices among several competing statutory interpretations, each of which has substantial support, and the record must provide evidence that the agency considered the language, structure, or purpose of the statute when selecting an interpretation. Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs., 789 A.2d 1261, 2002 D.C. App. LEXIS 14 (2002).

Appellate court will review the affirmance of an administrative action by the trial court in the same way that it would examine the agency's ruling if it came before it on direct review from the agency. Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs., 789 A.2d 1261, 2002 D.C. App. LEXIS 14 (2002).

Appellate court will examine an administrative record to determine if there has been procedural error, if there is substantial evidence in the record to support the action of the agency, or if the action is in some manner otherwise arbitrary, capricious, or an abuse of discretion. Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs., 789 A.2d 1261, 2002 D.C. App. LEXIS 14 (2002).

Appellate court, on appeal from decision of administrative agency, cannot retry the facts or rehear the evidence. Wash. Hosp. Ctr. v. D.C.

Dep't of Empl. Servs., 789 A.2d 1261, 2002 D.C. App. LEXIS 14 (2002).

Contentions not urged at the administrative level may not form the basis for overturning the decision on review, except under narrow exception on a showing of exceptional circumstances when the interests of justice so require. Wash. Hosp. Ctr. v. D.C. Dep't of Empl. Servs., 789 A.2d 1261, 2002 D.C. App. LEXIS 14 (2002).

The reviewing court affirms an agency's findings of fact and conclusions if they are supported by substantial evidence in the record. Kirkpatrick v. D.C. Pub. Schs., 786 A.2d 586, 2001 D.C. App. LEXIS 253 (2001).

The Court of Appeals, in reviewing an agency order, applies the "substantial evidence" standard. Wooten v. D.C. Dep't of Empl. Servs., 785 A.2d 657, 2001 D.C. App. LEXIS 235 (2001).

In reviewing an agency decision, the Court of Appeals inquires: (1) whether the agency has made a finding of fact on each material contested issue of fact, (2) whether substantial evidence of record supports each finding, and (3) whether conclusions legally sufficient to support the decision flow rationally from the findings. Wooten v. D.C. Dep't of Empl. Servs., 785 A.2d 657, 2001 D.C. App. LEXIS 235 (2001).

The Court of Appeals must affirm an agency decision unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Upchurch v. D.C. Dep't of Empl. Servs., 783 A.2d 623, 2001 D.C. App. LEXIS 229 (2001).

An agency's interpretation of its own regulations or of the statute which it administers is generally entitled to great deference from the Court of Appeals. Upchurch v. D.C. Dep't of Empl. Servs., 783 A.2d 623, 2001 D.C. App. LEXIS 229 (2001).

Judicial review must be deferential to the Police and Firefighters' Retirement and Relief Board, and the Board's decision should be affirmed when a consideration of the record as a whole indicates relevant evidence that reasonably support the findings, and the Board has made a correct interpretation of the governing law. Upchurch v. D.C. Dep't of Empl. Servs., 783 A.2d 623, 2001 D.C. App. LEXIS 229 (2001).

In reviewing a decision of the Police and Firefighters' Retirement and Relief Board, the Court of Appeals may reverse only if the Board's findings are unsupported by substantial evidence in the record or if the decision is grounded on a mistaken legal premise or manifests an abuse of discretion. Upchurch v. D.C. Dep't of Empl. Servs., 783 A.2d 623, 2001 D.C. App. LEXIS 229 (2001).

Supreme Court accords considerable deference to an agency's construction of the statute it administers. Pro-Football, Inc. v. District of Columbia Dep't of Empl. Servs., 782 A.2d 735, 2001 D.C. App. LEXIS 217 (2001).

An agency's interpretation of its own regulations or of the statute which it administers is generally entitled to great deference from the courts. Genstar Stone Prods. Co. v. Dep't of Empl. Servs., 777 A.2d 270, 2001 D.C. App. LEXIS 150 (2001).

Ordinarily, courts will not attempt to interpret an agency's statute until the agency itself has done so; instead, they will remand to permit the agency to engage in the necessary analysis of the legislation it is charged with carrying out. Genstar Stone Prods. Co. v. Dep't of Empl. Servs., 777 A.2d 270, 2001 D.C. App. LEXIS 150 (2001).

The degree of deference to be accorded to an agency's statutory interpretation is a function of the process by which that interpretative ruling has been arrived at and the degree to which the agency's administrative experience and expertise have contributed to the process. Genstar Stone Prods. Co. v. Dep't of Empl. Servs., 777 A.2d 270, 2001 D.C. App. LEXIS 150 (2001).

If an agency's decision is based upon a material misconception of the law, then a reviewing court will reject it. Genstar Stone Prods. Co. v. Dep't of Empl. Servs., 777 A.2d 270, 2001 D.C. App. LEXIS 150 (2001).

The Court of Appeals accepts the findings of the Board on Professional Responsibility as long as they are supported by substantial evidence in the record. In re Shaw, 775 A.2d 1123, 2001 D.C. App. LEXIS 142 (2001).

The Board on Professional Responsibility's recommended attorney discipline comes to the Court of Appeals with a strong presumption in favor of its imposition; generally speaking, if the Board's recommended sanction falls within a wide range of acceptable outcomes, it will be adopted and imposed. In re Shaw, 775 A.2d 1123, 2001 D.C. App. LEXIS 142 (2001).

Court of Appeals must affirm an agency decision unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Clark v. District of Columbia Dep't of Empl. Servs., 772 A.2d 198, 2001 D.C. App. LEXIS 102 (2001).

Court of Appeals will affirm an agency finding of fact or conclusion of law so long as it is supported by substantial evidence, notwithstanding that there may be contrary evidence in the record. Washington Metro. Area Transit Auth. v. State Dep't of Empl. Servs., 770 A.2d 965, 2001 D.C. App. LEXIS 84 (2001).

Like the Director of the Department of Employment Services' (DOES), the Court of Appeals must affirm the hearing examiner's workers' compensation order if the findings of fact contained therein are supported by substantial evidence in the record as a whole and the law has been properly applied. Washington Metro. Area Transit Auth. v. State Dep't of Empl.

Servs., 770 A.2d 965, 2001 D.C. App. LEXIS 84 (2001).

The scope of review of an administrative decision is limited, and the Court of Appeals will affirm where (1) the agency's decision states findings of fact on each material, contested issue; (2) those findings are based on substantial evidence; and (3) the conclusions of law flow rationally from the findings. Majerle Mgmt. v. Dist.of Columbia Rental Hous. Comm'n, 768 A.2d 1003, 2001 D.C. App. LEXIS 58 (2001), vacated in part by, remanded by 777 A.2d 785, 2001 D.C. App. LEXIS 134 (D.C. 2001).

Once the Alcohol Beverage Control Board is satisfied that an applicant has satisfied the statutory "appropriateness" qualifications, the Court of Appeals' review of that decision is deferential. Dupont Circle Citizens Ass'n v. District of Columbia Alcoholic Bev. Control Bd., 766 A.2d 59, 2001 D.C. App. LEXIS 18 (2001).

Whether an agency tribunal such as the Alcohol Beverage Control Board commits the disqualification decision entirely to the individual member, or asserts the authority to itself disqualify a member, is a matter over which the court has almost no review authority. Dupont Circle Citizens Ass'n v. District of Columbia Alcoholic Bev. Control Bd., 766 A.2d 59, 2001 D.C. App. LEXIS 18 (2001).

Scope of the Superior Court's review of decision of the Office of Employee Appeals (OEA) is the same as Court of Appeals' review. Dupont Circle Citizens Ass'n v. District of Columbia Alcoholic Bev. Control Bd., 766 A.2d 59, 2001 D.C. App. LEXIS 18 (2001).

Disagreement is not a basis for rejecting factual findings and credibility determinations made by the administrative law judge. Dupont Circle Citizens Ass'n v. District of Columbia Alcoholic Bev. Control Bd., 766 A.2d 59, 2001 D.C. App. LEXIS 18 (2001).

Court of Appeals' review of workers' compensation decision of Director of the Department of Employment Services (DOES) is limited to determining whether the Director's order is in accordance with law and supported by substantial evidence in the record, and "substantial evidence" is more than a scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Murray v. District of Columbia Dep't of Empl. Servs., 765 A.2d 980, 2001 D.C. App. LEXIS 13 (2001).

An agency's interpretation of a statute it administers is binding on the Court of Appeals unless it conflicts with the plain meaning of the statute or its legislative history; the Court must sustain the agency's interpretation even if a petitioner advances another reasonable interpretation of the statute or if the Court might have been persuaded by the alternate interpretation had the Court been construing the statute in the first instance. Mushroom Transp. v. District of Columbia Dep't of Empl. Servs., 761 A.2d 840, 2000 D.C. App. LEXIS 250 (2000).

In reviewing administrative agency decision, Court of Appeals considers whether agency has made finding of fact on each material contested issue of fact, whether substantial evidence of record supports each finding, and whether conclusions legally sufficient to support the decision flow rationally from the findings. Pickrel v. District of Columbia Dep't of Empl. Servs., 760 A.2d 199, 2000 D.C. App. LEXIS 233 (2000).

Reviewing court must affirm the agency's decision when: (1) the agency made findings of fact on each materially contested issue of fact; (2) substantial evidence supports each finding; and (3) agency's conclusions flow rationally from its findings of fact. D.C. Code 1981, §§ 1-1510(a)(3)(E). Giles v. District of Columbia Dep't of Empl. Servs., 758 A.2d 522, 2000 D.C. App. LEXIS 203 (2000).

Reviewing court defers to agency findings of fact so long as they are supported by substantial evidence, and "substantial evidence" is more than a mere scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Giles v. District of Columbia Dep't of Empl. Servs., 758 A.2d 522, 2000 D.C. App. LEXIS 203 (2000).

Reviewing court cannot substitute its judgment for that of the agency. Giles v. District of Columbia Dep't of Empl. Servs., 758 A.2d 522, 2000 D.C. App. LEXIS 203 (2000).

Court of Appeals reviews the factual findings of the agency for the limited purpose of determining whether there is substantial evidence to support them; Court cannot retry the facts or rehear the evidence. Giles v. District of Columbia Dep't of Empl. Servs., 758 A.2d 522, 2000 D.C. App. LEXIS 203 (2000).

If Court of Appeals, upon examining the record as a whole, concludes that the agency's findings are supported by substantial evidence, it must accept those findings, even though there may also be substantial evidence in the record to support a contrary finding. Giles v. District of Columbia Dep't of Empl. Servs., 758 A.2d 522, 2000 D.C. App. LEXIS 203 (2000).

Although Court of Appeals' review of an agency's legal conclusions is de novo, agency's interpretation of its own regulations or of the statute which it administers is generally entitled to great deference from Court. Giles v. District of Columbia Dep't of Empl. Servs., 758 A.2d 522, 2000 D.C. App. LEXIS 203 (2000).

Court refrains from substituting its judgment in areas of expertise reserved for the agency. Giles v. District of Columbia Dep't of Empl. Servs., 758 A.2d 522, 2000 D.C. App. LEXIS 203 (2000).

In suit against District of Columbia Board of Higher Education for equitable relief and ac-

tual, compensatory and punitive damages on theory that Board breached plaintiff's one-year employment contract to serve as college president's assistant for community affairs by withholding paychecks, by reassigning him to another position, by willfully and maliciously denying him a step increase in salary and failing to renew contract, findings that no adverse actions had occurred and thus that Board's resolution did not require that there be an adverse action proceeding were supported by substantial evidence and were not clearly erroneous. D.C. Code § 17-305(a). Roberson v. District of Columbia Board of Higher Education, 359 A.2d 28, 1976 D.C. App. LEXIS 301 (1976).

Unanimous medical opinion, as reflected in medical reports of eight physicians who had been involved in medical history of policeman seeking determination that he was disabled for performance of duty, that policeman was not disabled supported Board of Appeals and Review determination that policeman was not disabled. D.C. Code §§ 1-1509, 4-525a, 4-527, 4-533, 4-535, 17-305; Organization Order No. 112, D.C. Code, Tit. 1, Appendix III. Brooks v. District of Columbia Board of Appeals & Review, 317 A.2d 864, 1974 D.C. App. LEXIS 403 (1974).

— Admissions and confessions, scope of review.

Court of Appeals would review for plain error defendant's claim that trial judge had been biased against him, in prosecution for distribution of cocaine, as all but one of the instances of alleged bias occurred before defendant was sentenced, and no claim of bias had been asserted at sentencing. Plummer v. United States, 870 A.2d 539, 2005 D.C. App. LEXIS 138 (2005).

Pretrial motion preserved defendant's constitutional challenge to the admission of statements allegedly against penal interest, even though the defendant did not specifically mention the confrontation clause in his opening brief. Doret v. United States, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

The standard of review of a ruling admitting hearsay as a declaration against penal interest required a determination whether the trial court's factual findings were clearly erroneous. Doret v. United States, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

Detective's testimony that defendant began talking spontaneously and asking questions very soon after defendant was advised of his Miranda rights and invoked his right to counsel supported trial court's factual findings that defendant voluntarily initiated discussion with detective and that detective did not question defendant about offense with which defendant was charged. U.S. Const.Amends. 5, 6; D.C. Code 1981, § 17-305(a). Gilmore v. United States, 742 A.2d 862, 1999 D.C. App. LEXIS 263 (1999).

Evidence, including that defendant indicated that he did not want to answer any questions and did not want to answer questions without an attorney present on both occasions when he was informed of his Miranda rights, and that defendant did not say anything when detective initially spoke with him, supported finding that defendant had invoked his rights to remain silent and not to say anything without attorney present. D.C. Code 1981, § 17-305(a). Derrington v. United States, 488 A.2d 1314, 1985 D.C. App. LEXIS 329 (1985), writ of certiorari denied by 486 U.S. 1009, 108 S. Ct. 1738, 100 L. Ed. 2d 201, 1988 U.S. LEXIS 2187, 56 U.S.L.W. 3789 (1988).

Evidence supported trial court's finding that defendant's Miranda rights were scrupulously honored. D.C. Code 1981, § 17-305(a). Davies v. United States, 476 A.2d 658, 1984 D.C. App. LEXIS 387 (1984).

Finding that juvenile's inculpatory statement in presence of his mother and police officer was voluntary and was not product of any infringement of juvenile's rights did not lack substantial support in the evidence. U.S. Const. Amends. 5, 6; D.C. Code § 17-305(a). In re P., 411 A.2d 643, 1980 D.C. App. LEXIS 240 (1980), vacated by 449 U.S. 945, 101 S. Ct. 345, 66 L. Ed. 2d 210, 1980 U.S. LEXIS 3678, 49 U.S.L.W. 3331 (1980).

— Adoption proceedings, scope of review.

Appellate court reviews the trial court's ultimate determination to waive a parent's consent to child's adoption for abuse of discretion. In re J.L., 884 A.2d 1072, 2005 D.C. App. LEXIS 260 (2005).

Court of Appeals reviews finding that parents have withheld their consent to child's adoption contrary to child's best interests for abuse of discretion. In re F.W., 870 A.2d 82, 2005 D.C. App. LEXIS 52 (2005).

Court of Appeals reviews for an abuse of discretion a ruling on motion under adoption rule governing challenges to final adoption decree due to jurisdictional or procedural defect. In re W.E.T., 793 A.2d 471, 2002 D.C. App. LEXIS 52 (2002).

Trial judge has broad discretion, reviewable only for abuse, with respect to determination of whether best interests of child warrant authorizing adoption without natural parent's consent. D.C. Code 1981, § 17-305(a). In re L.W., 613 A.2d 350, 1992 D.C. App. LEXIS 207 (1992).

Trial court's finding that best interests of seven-year-old girl warranted authorization of adoption by foster parents without natural father's consent was not abuse of discretion; evidence included proof that biological father suffered from significant personality disorders, that child had special needs relating to asthma and borderline intelligence, that child came to live with adoptive parents when she was nine months old after neglect by biological parents, and that adoptive parents were exceptionally qualified to address child's needs. D.C. Code 1981, §§ 16-304(a, e), 17-305(a). In re L.W., 613 A.2d 350, 1992 D.C. App. LEXIS 207 (1992).

Judgment of trial court that natural mother freely and voluntarily executed papers relinquishing her parental rights, with full understanding of adoption process and finality of her act was not plainly wrong or without evidence to support it. D.C. Code §§ 17-305(a), 32-786(a). L. v. Lutheran Social Services of National Capital Area, Inc., 418 A.2d 133, 1980 D.C. App. LEXIS 336 (1980).

Clear and convincing evidence supported trial court's findings that child was suitable for adoption, that adoptors, aunt and uncle, were fit, able and willing to provide proper home and family environment conducive to child's normal development, that adoption would serve best interests of child and that natural father's consent was withheld contrary to child's best interests. D.C. Code §§ 16-304, 16-304(e), 17-305. Petition of Douglas, 390 A.2d 1, 1978 D.C. App. LEXIS 398 (1978), writ of certiorari denied by 439 U.S. 1058, 99 S. Ct. 738, 58 L. Ed. 2d 716, 1978 U.S. LEXIS 4286 (1978).

— Alimony and child support actions, scope of review.

Transcript of audiotape of hearing on former wife's pre-trial motion to modify child support in divorce proceeding was not unreliable for purposes of appellate review, and, thus, trial court properly refused to approve former husband's proposed reconstructed statement of hearing for submission to Court of Appeals; there were portions of audiotape that were inaudible, but critical part of audiotape pertaining to former wife's appointment to list of attorneys eligible to handle Criminal Justice Act (CJA) cases and comments made by trial judge during hearing was transcribed and made available to former husband, and transcript established that former husband's reconstructed statement was wrong with respect to statements of trial judge during hearing. Mayers v. Mayers, 908 A.2d 1182, 2006 D.C. App. LEXIS 547 (2006).

Appellate court reviews a trial court's application of the child support guidelines for abuse of discretion. Slaughter v. Slaughter, 867 A.2d 976, 2005 D.C. App. LEXIS 18 (2005).

Decisions respecting grant or denial of alimony are committed to sound discretion of the trial court and will be disturbed on appeal only when record manifests abuse of that discretion. Lake v. Lake, 756 A.2d 917, 2000 D.C. App. LEXIS 185 (2000).

Appellate court may reverse alimony award only where trial court's finding is plainly wrong or without substantial evidence to support it. Lake v. Lake, 756 A.2d 917, 2000 D.C. App. LEXIS 185 (2000).

In divorce proceeding, award of 60 percent of marital home to husband, who had degenerating spinal arthritis, was in accord with statute and was supported by the evidence. D.C. Code 1981, §§ 16-910(b), 17-305(a). Broadwater v. Broadwater, 449 A.2d 286, 1982 D.C. App. LEXIS 400 (1982).

In proceeding in which divorce was granted on ground of voluntary separation for one year and in which spouses' assets were divided, trial court's findings had sufficient support in the evidence and were sufficiently detailed so as to enable Court of Appeals to exercise meaningful review. D.C. Code 1973, § 17-305(a). Murville v. Murville, 433 A.2d 1106, 1981 D.C. App. LEXIS 330 (1981).

Former husband's motion to reduce support obligations ordered in divorce decree gave trial court sufficient notice that he might be unable to meet his obligations under order staying prison sentence for contempt of the support obligation and requiring that he pay a certain amount of the arrearages, and was in effect a request for relief from terms of the stay; therefore, finding that former husband had not proffered any defense or justification for his violation of the stay was plainly wrong and without evidence to support it, and thus trial court abused its discretion in revoking the stay and committing former husband to jail. D.C. Code §§ 11-944, 15-320(c), 16-911, 16-912, 16-916, 17-305(a). Smith v. Smith, 427 A.2d 928, 1981 D.C. App. LEXIS 221 (1981).

Awarding divorced wife $338 alimony was not abuse of discretion, notwithstanding that under support order she was receiving $300, where trial court found that the former figure represented the difference between her monthly expenses and her monthly income, including the separate maintenance award. D.C. Code § 17-305(a). Finch v. Finch, 378 A.2d 1092, 1977 D.C. App. LEXIS 244 (1977).

Award of alimony is a matter committed to the sound discretion of the trial court; award may be disturbed only on showing of abuse of discretion. D.C. Code § 17-305(a). Finch v. Finch, 378 A.2d 1092, 1977 D.C. App. LEXIS 244 (1977).

Evidence fully supported trial court's finding that wife's conduct in failing to make good-faith attempt to comply with court order to sell realty merited sanction of civil contempt adjudication.

D.C. Code § 17-305(a). Bolden v. Bolden, 376 A.2d 430, 1977 D.C. App. LEXIS 351 (1977).

Although, under property settlement agreement, husband agreed to pay his children's private school tuition provided he approved of the school in advance, and although, in respect to certain private school, husband never responded to wife's request that he pay the first semester tuition and he expressly disapproved of the school for the second semester of the 1974-75 academic year, the record and proceedings established that his actions were not the product of a reasonable and good faith consideration of the school and its program. D.C. Code § 17-305. Eisenberg v. Eisenberg, 357 A.2d 396, 1976 D.C. App. LEXIS 274 (1976).

In divorce case, award to wife of $500 monthly for child support did not constitute an abuse of discretion, nor did court abuse discretion in setting initial award for attorney fees at $1,500 and in raising award thereafter to $2,500, though wife was earning gross salary of $11,175 annually. D.C. Code§ 17-305(a); D.C. Code SCR, Dom.Rel.Rules 52(a), 53(e)(2). Quarles v. Quarles, 353 A.2d 285, 1976 D.C. App. LEXIS 493 (1976), writ of certiorari denied by 429 U.S. 922, 97 S. Ct. 321, 50 L. Ed. 2d 290, 1976 U.S. LEXIS 3335 (1976).

Evidence in divorce case sustained findings of auditor, as approved by trial court, with respect to husband's property and income. D.C. Code § 17-305(a); D.C. Code SCR, Dom.Rel.Rules 52(a), 53(e)(2). Quarles v. Quarles, 353 A.2d 285, 1976 D.C. App. LEXIS 493 (1976), writ of certiorari denied by 429 U.S. 922, 97 S. Ct. 321, 50 L. Ed. 2d 290, 1976 U.S. LEXIS 3335 (1976).

Finding that divorced parties to support dispute had never agreed to reduce husband's support payment after one of two children became 21 was not clearly erroneous. D.C. Code § 17-305(a). Rhodes v. Gilpin, 264 A.2d 497, 1970 D.C. App. LEXIS 274 (App. 1970).

Award of $35 per week for support and maintenance of wife who was in poor health, incapable of working, had no source of income or other property and who had been married to husband for 26 years, and of two minor children of marriage by husband with salary of approximately $13,400 per year and who had admitted by pleadings and testimony that wife needed at least $250 per month to support herself and two children did not constitute an exercise of sound discretion. D.C. Code §§ 16-913, 17-305(a). Majette v. Majette, 261 A.2d 824, 1970 D.C. App. LEXIS 212 (App. 1970).

— Arbitration proceedings, scope of review.

The Court of Appeals does not set aside arbitration awards for errors of fact. Motor City Drive, L.L.C. v. Brennan Beer Gorman Monk Architects & Interiors, P.L.L.C., 890 A.2d 233, 2006 D.C. App. LEXIS 8 (2006).

The standard of review of arbitrability is de novo. Motor City Drive, L.L.C. v. Brennan Beer Gorman Monk Architects & Interiors, P.L.L.C., 890 A.2d 233, 2006 D.C. App. LEXIS 8 (2006).

With rare exceptions, arbitration award will not be disturbed unless the arbitration panel is found to have ruled on matters beyond the scope of its authority, or unless it appears that the panel manifestly disregarded the law. Shore v. Groom Law Group, 877 A.2d 86, 2005 D.C. App. LEXIS 11 (2005).

Appellate court will not set aside an arbitration award for errors of either law or fact made by the arbitrator. Shore v. Groom Law Group, 877 A.2d 86, 2005 D.C. App. LEXIS 11 (2005).

Judicial review of arbitration awards is limited. Shore v. Groom Law Group, 877 A.2d 86, 2005 D.C. App. LEXIS 11 (2005).

In ruling on a challenge to an arbitration award, the Court of Appeals must determine whether the trial court correctly applied the standards set forth in the Arbitration Act to the facts of the case. Sanders v. Maple Springs Baptist Church, 787 A.2d 120, 2001 D.C. App. LEXIS 254 (2001).

Court of Appeals reviews determination of whether particular dispute is arbitrable de novo, like any question of law. D.C. Code 1981, § 17-305(a). Haynes v. Kuder, 591 A.2d 1286, 1991 D.C. App. LEXIS 155 (1991), modified by 1991 D.C. App. LEXIS 203, 1991 D.C. App. LEXIS 204 (D.C. July 18, 1991).

— Arrest, scope of review.

Trial court's refusal to seal acquitted defendant's records pertaining to her arrest for failure to obey order of police officer was not an abuse of discretion, where defendant did not prove by clear and convincing evidence that she did not commit offense, and there did not exist some other circumstance that would make it manifestly unjust to decline to seal arrest record. Sepulveda-Hambor v. District of Columbia, 885 A.2d 303, 2005 D.C. App. LEXIS 530 (2005).

Individual who told police about robbery and murder was not confidential informant "from the criminal milieu" but rather was citizen reporting criminal activity, where at the time, he was not facing any pending criminal charges nor did he request anything from police in connection with his information. D.C. Code 1981, § 17-305(a). Derrington v. United States, 488 A.2d 1314, 1985 D.C. App. LEXIS 329 (1985), writ of certiorari denied by 486 U.S. 1009, 108 S. Ct. 1738, 100 L. Ed. 2d 201, 1988 U.S. LEXIS 2187, 56 U.S.L.W. 3789 (1988).

In view of violent and brutal nature of crime, strong showing of probable cause, recentness of offense and likely destruction of evidence should entry be delayed, trial court, even while

giving proper consideration to seriousness of officers' nighttime intrusion into defendant's apartment, could find that warrantless forced entry was permissible and presented no grounds for suppression of evidence seized. D.C. Code § 17-305; U.S. Const. Amend. 4. Brooks v. United States, 367 A.2d 1297, 1976 D.C. App. LEXIS 422 (1976).

Actions of police officer, who had observed defendant acting somewhat suspiciously while standing among group of people at corner bus stop, in placing his hand on defendant's elbow and saying, "Hold it, sir, could I speak with you a second?", to which defendant's instantaneous reply was, "It's registered, it's registered.", following which remark officer asked what was registered and received answer that defendant's pistol was registered, and then conducted search for pistol which he recovered from defendant's person did not amount to an unconstitutional intrusion upon defendant's rights against arrest without probable cause. D.C. Code § 17-305(a); U.S. Const. Amend. 4. United States v. Burrell, 286 A.2d 845, 1972 D.C. App. LEXIS 332 (1972).

— Assistance of counsel, scope of review.

Client who brought legal malpractice action against attorney after summary judgment was entered against client on his employment discrimination claim against former employer could not establish injury from attorney's alleged malpractice of failing to file opposition to employer's summary judgment motion, where judge who granted motion had before him all of client's evidence in support of underlying claim and concluded on full record, including client's deposition and affidavits submitted by employer, that he would have entered summary judgment against client, even if attorney had filed timely opposition to motion. Hobley v. Law Office of S. Howard Woodson, III, 983 A.2d 1000, 2009 D.C. App. LEXIS 598 (2009).

Allegations in complaint discussing nature of attorneys' perceived shortcomings in representation of estate and widow of postal worker who died from exposure to anthrax spores contained in letter sent by terrorist directed to United States Senator, and which asserted that, but for attorneys' negligence, plaintiffs would have prevailed in separate litigation on grounds of negligent medical care and inadequate response by postal officials, stated claim for legal malpractice against attorneys, even though other litigation had not been completed and damages in other action were not yet determined; attorneys were given fair notice of basis of lawsuit, and plaintiffs were not required to prove their case on motion to dismiss. In re Estate of Curseen v. Ingersoll, 890 A.2d 191, 2006 D.C. App. LEXIS 6 (2006).

Actual, not speculative, damage is required to succeed on a legal malpractice claim. In re Estate of Curseen v. Ingersoll, 890 A.2d 191, 2006 D.C. App. LEXIS 6 (2006).

To prove legal malpractice, a plaintiff must show an applicable standard of care, prove a breach of that standard, and demonstrate a causal relationship between the violation and the harms enumerated in the complaint. In re Estate of Curseen v. Ingersoll, 890 A.2d 191, 2006 D.C. App. LEXIS 6 (2006).

Because a motion to dismiss a complaint for failure to state a claim upon which relief may be granted presents questions of law, the standard of review on appeal from an order granting the motion is de novo. In re Estate of Curseen v. Ingersoll, 890 A.2d 191, 2006 D.C. App. LEXIS 6 (2006).

The nature of a Monroe-Farrell inquiry into a defendant's pre-trial claim of ineffective assistance of counsel is within the trial court's discretion. Forte v. United States, 856 A.2d 567, 2004 D.C. App. LEXIS 398 (2004), writ of certiorari denied by 543 U.S. 1174, 125 S. Ct. 1368, 161 L. Ed. 2d 155, 2005 U.S. LEXIS 1862, 73 U.S.L.W. 3496 (2005).

Denial of requests for appointment of counsel to pursue collateral relief is reviewed for an abuse of discretion. Wei Hua Wu v. United States, 798 A.2d 1083, 2002 D.C. App. LEXIS 294 (2002).

In reviewing a determination that counsel's performance was not deficient, the Court of Appeals yields to the trial court's factual findings when supported by the record, but reviews its legal conclusions de novo. Leftridge v. United States, 780 A.2d 266, 2001 D.C. App. LEXIS 199 (2001).

Finding of ineffective assistance of counsel is mixed question of law and fact, and, upon review, the Court of Appeals will not reverse trial court's findings of fact if they are supported by evidence in the record; however, the Court owes no deference to trial court on ultimate question of law. U.S. Const.Amend. 6; D.C. Code 1981, § 17-305(a). Curry v. United States, 498 A.2d 534, 1985 D.C. App. LEXIS 482 (1985).

— Bailments, scope of review.

Where there was testimony that five uniformed employees of defendant parking lot were on duty at time owner parked his vehicle, which was later found to have been damaged when someone attempted to pry open the trunk, and where parking lot supervisor testified that watching the area and acting as a "kind of security" was part of parking lot employees' job, circumstances were sufficient to create an implied duty of reasonable care by parking lot operator to protect vehicle from malicious mischief, and finding that a violation of that duty occurred was not clearly erroneous even though owner retained the keys. D.C. Code § 17-305(a). Parking Management, Inc. v.

Gilder, 343 A.2d 51, 1975 D.C. App. LEXIS 435 (1975).

Finding that automobile lessee terminated lease prematurely by announcing it had no further need for automobile and returning it to lessor was supported by substantial evidence and was not clearly erroneous. D.C. Code § 17-305(a). Stone Heating & Ventilating Co. v. Anacostia Leasing Corp., 256 A.2d 923, 1969 D.C. App. LEXIS 321 (App. 1969).

— Constitutional rights of litigants, scope of review.

Whether a suspect voluntarily waived his Miranda rights is an issue of fact to which the appellate court defers to the trial court's finding unless it is without substantial support in the evidence or plainly wrong. Dean v. United States, 938 A.2d 751, 2007 D.C. App. LEXIS 701 (2007), writ of certiorari denied by 557 U.S. 938, 129 S. Ct. 2862, 174 L. Ed. 2d 581, 2009 U.S. LEXIS 4875, 77 U.S.L.W. 3708 (2009).

To decide whether an award of punitive damages is constitutional, under the due process clause, a reviewing court must apply "three guideposts": (1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. Daka, Inc. v. McCrae, 839 A.2d 682, 2003 D.C. App. LEXIS 752 (2003).

To invoke plain error exception to rule that constitutional claims not made in trial court are ordinarily unreviewable on appeal, appellant must show that the alleged error is obvious and so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity of the proceeding. In re J.W., 837 A.2d 40, 2003 D.C. App. LEXIS 697 (2003).

Court of Appeals deviates from general rule that constitutional claims not made in trial court are ordinarily unreviewable on appeal only in exceptional situations and when necessary to prevent a clear miscarriage of justice apparent from the record. In re J.W., 837 A.2d 40, 2003 D.C. App. LEXIS 697 (2003).

Constitutional claims not made in the trial court are ordinarily unreviewable on appeal. In re J.W., 837 A.2d 40, 2003 D.C. App. LEXIS 697 (2003).

An appellate court reviews a claim of merger of convictions de novo to determine whether there has been a violation of the Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States. Sanchez-Rengifo v. United States, 815 A.2d 351, 2002 D.C. App. LEXIS 799 (2002).

In order to determine whether defendant's waiver of his Miranda rights was made knowingly, intelligently, and voluntarily, appellate court had to must examine the particular facts and circumstances surrounding his case and the totality of the circumstances. Di Giovanni v. United States, 810 A.2d 887, 2002 D.C. App. LEXIS 655 (2002).

On appeal from the denial of a petition for writ of habeas corpus, the Court of Appeals would not review the merits of the Parole Board's decision to revoke probation, but only whether the petitioner had been deprived of his legal rights by the manner in which the revocation hearing was conducted, in order to determine whether there had been abuse of discretion. Nixon v. Quick, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

Correct standard of review for defendant's claim that his right to confrontation was violated, due to trial court's ex parte ruling that prosecution did not need to divulge to defense factual basis for government witness' possible bias, which was that witness' sons were under investigation for sexually abusing two of defendant's children, was constitutional harmless error standard, not Brady standard, in prosecution for cruelty to children and assault; trial court kept evidence from being used by defense, thereby precluding a relevant inquiry as to bias, and trial counsel never had opportunity to argue why allegations against witness' sons would be relevant. Nixon v. Quick, 781 A.2d 754, 2001 D.C. App. LEXIS 212 (2001).

Suspended attorney's claim that bar rules, which required him to suspend practice of law without wind-up grace period, violated his right to equal protection, was raised on appeal for first time, and thus, appellate court could decline to consider contention, since alleged constitutional shortcoming was not so plain that trial judge should have ruled on it notwithstanding attorney's failure to raise it. In re Richardson, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

Alleged procedural and due process violations concerned underlying interim suspension order, rather than suspended attorney's contempt conviction, and thus, allegations were not properly before appellate court, as suspension order was res judicata. In re Richardson, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

While appellate court generally defers to trial court's exercise of discretion with respect to management and scheduling of court matters, there is also a paramount judicial obligation to resist calendar pressures in specific cases in which yielding to them is likely to prejudice substantial rights. Johnson v. Washington, 756 A.2d 411, 2000 D.C. App. LEXIS 179 (2000).

Claims of violation of the Double Jeopardy Clause and the merger of convictions are reviewed de novo. Black v. United States, 755 A.2d 1005, 2000 D.C. App. LEXIS 166 (2000).

Decision to adopt a particular method of law enforcement is normally left to the police and will be upheld unless there has been some form of invidious discrimination. D.C. Code 1981, §§ 17-305(a), 22-2701. Eissa v. United States, 485 A.2d 610, 1984 D.C. App. LEXIS 576 (1984), writ of certiorari denied by 474 U.S. 1013, 106 S. Ct. 544, 88 L. Ed. 2d 474, 1985 U.S. LEXIS 4693, 54 U.S.L.W. 3375 (1985).

— Contempt actions, scope of review.

Attorney was not prejudiced by lack of initial showing of probable cause for criminal contempt charge, given that bar counsel's motion for order to show cause was partly based on attorney's appearance before judge on four occasions after date of suspension order, which provided sufficient probable cause to support charge of criminal contempt. In re Richardson, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

Suspended attorney practiced law for more than thirty days following his suspension, and was also adjudicated in contempt for violating court's order to notify his clients of his suspension, and thus, appellate court was warranted in not reviewing attorney's constitutional equal protection argument that bar rules required attorneys suspended in reciprocal discipline proceedings to suspend practices immediately, whereas rules accorded attorneys suspended in original discipline cases were given 30-day grace period to wind-up law practices. In re Richardson, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

Findings by single judge of Court of Appeals in contempt proceeding which rest on evaluation of credibility of alleged contemnor and another witness will not be disturbed by the court unless plainly wrong or without evidence to support them. D.C. Code 1981, § 17-305(a). In re Burton, 614 A.2d 46, 1992 D.C. App. LEXIS 226 (1992).

Finding mother in contempt for refusing father visitation on alternating weekends was not clearly erroneous notwithstanding mother's claim that child refused to go and that mother had duty to protect child from abuse by father where not prosecuting authority that investigated allegations had brought charges against father and court which conducted trial and abuse issue found in father's favor, and, mother did not move to have his visitation rights suspended until almost one and one-half years after father began filing motions for contempt against mother to obtain visitation. D.C. Code 1981, § 17-305(a). Morgan v. Foretich, 528 A.2d 425, 1987 D.C. App. LEXIS 378 (1987).

Trial court's criminal contempt judgment is not to be set aside unless found to be plainly wrong or without supporting evidence. D.C. Code 1981, § 17-305(a). In re Thompson, 454 A.2d 1322, 1982 D.C. App. LEXIS 504 (1982).

Where order appointing counsel and notices of hearing were sent to the same address as show cause order in contempt proceeding, the latter notice was admittedly received at that address, and none of the other notices was returned to the sender, receipt of the notices could be presumed, absent rebuttal evidence, and finding for purposes of contempt adjudication beyond a reasonable doubt that notice of order and hearings had been received was not plainly wrong or without evidence to support it. D.C. Code 1981, § 17-305(a). In re Marshall, 445 A.2d 5, 1982 D.C. App. LEXIS 324 (1982), writ of certiorari denied by 459 U.S. 875, 103 S. Ct. 166, 74 L. Ed. 2d 137, 1982 U.S. LEXIS 3690, 51 U.S.L.W. 3258 (1982).

In proceeding in which persons were found in contempt for failure to obey subpoenas to reappear as witnesses in criminal prosecution, evidence sufficiently supported findings that such persons knew that they had received a court paper and deliberately chose to disregard it and that they were without adequate excuse for failing to obey the subpoenas. D.C. Code §§ 11-944, 17-305; D.C. Code SCR, Criminal Rule 17(g). In re Kirk, 413 A.2d 928, 1980 D.C. App. LEXIS 280 (1980).

Defendant's guilt of criminal contempt for violating a lineup order was established beyond a reasonable doubt, where the lineup order had specified that defendant was not to change his facial or bodily appearance prior to the lineup, but where defendant later appeared at the lineup with a shaven head. D.C. Code §§ 11-944, 17-305. In re Carter, 373 A.2d 907, 1977 D.C. App. LEXIS 323 (1977).

— Contract actions, scope of review.

Under District of Columbia law, question of whether insurance contract is ambiguous is one of law, reviewed de novo by court. Sigmund v. Progressive Northern Ins. Co., 374 F.Supp.2d 33, 2005 U.S. Dist. LEXIS 11549 (2005).

Accord and satisfaction is an affirmative defense raised by a debtor to a breach of contract claim. Eagle Maint. Servs. v. D.C. Contract Appeals Bd., 893 A.2d 569, 2006 D.C. App. LEXIS 88 (2006).

The "voluntary payment doctrine" is an affirmative defense to a suit for breach of contract which provides that money voluntarily paid under a claim of right to the payment, and with knowledge of the facts by the person making the payment, cannot be recovered by the payor solely because the claim was illegal. Eagle Maint. Servs. v. D.C. Contract Appeals Bd., 893 A.2d 569, 2006 D.C. App. LEXIS 88 (2006).

An "account stated" is a promise by a debtor to pay a stated sum of money which the parties had agreed upon as the amount due; the doctrine of account stated presupposes an absolute acknowledgment or admission of a certain sum due, or an adjustment of accounts between the

parties, the striking of a balance, and an assent, express or implied, to the correctness of the balance. Eagle Maint. Servs. v. D.C. Contract Appeals Bd., 893 A.2d 569, 2006 D.C. App. LEXIS 88 (2006).

University professor, whose application for tenure was denied by university, did not establish breach of contract claim against university; promotion and tenure process that university followed, consistent with its faculty handbook, belied professor's contention that the tenure decision was made arbitrarily or capriciously, and professor did not show sufficient productivity in the important areas of research, publication, and grantsmanship, nor was she successful in showing progress on the research/publication front as evidenced by the rejection of her paper by scholarly journal. Allworth v. Howard Univ., 890 A.2d 194, 2006 D.C. App. LEXIS 4 (2006).

An appellate court reviews a trial court's legal conclusion that a contract is enforceable de novo, but the trial court's subsidiary factual findings are treated as presumptively correct unless they are clearly erroneous or unsupported by the record. Duffy v. Duffy, 881 A.2d 630, 2005 D.C. App. LEXIS 458 (2005).

The Court of Appeals on review of decision in bench trial owed a substantial measure of deference to trial judge's determination of what was reasonable time for contract performance. Independence Mgmt. Co. v. Anderson & Summers, LLC, 874 A.2d 862, 2005 D.C. App. LEXIS 252 (2005).

The trial court's interpretation of the forum selection clause, a contractual provision, is subject to de novo review. Forrest v. Verizon Communs., Inc., 805 A.2d 1007, 2002 D.C. App. LEXIS 509 (2002).

The Court of Appeals applies a de novo standard of review to the interpretation of an insurance contract. Air Line Pilots Ass'n v. Twin City Fire Ins. Co., 803 A.2d 1001, 2002 D.C. App. LEXIS 391 (2002).

Where insurance contract language is not ambiguous, summary judgment is appropriate because a written contract duly signed and executed speaks for itself and binds the parties without the necessity of extrinsic evidence. Stevens v. United Gen. Title Ins. Co., 801 A.2d 61, 2002 D.C. App. LEXIS 320 (2002).

Whether a contract is ambiguous is a question of law. Trilon Plaza v. Comptroller of N.Y., 788 A.2d 146, 2001 D.C. App. LEXIS 256 (2001).

Whether a contract is ambiguous is a question of law decided de novo. Dist. No. 1-Pac. Coast Dist., Marine Engr's Ben. Ass'n v. Travelers Cas. & Sur. Co., 782 A.2d 269, 2001 D.C. App. LEXIS 207 (2001).

Whether a contract is enforceable is a legal issue that the appellate court considers de novo. Affordable Elegance Travel, Inc. v. Worldspan, L.P., 774 A.2d 320, 2001 D.C. App. LEXIS 132 (2001).

Whether an insurance contract is ambiguous is a question of law reviewed de novo. Travelers Indem. Co. v. United Food & Commer. Workers Int'l Union, 770 A.2d 978, 2001 D.C. App. LEXIS 98 (2001).

In reviewing trial court's determination as to meaning of contractual provision, appellate court first asks whether meaning of provision is plain on its face or whether it is ambiguous; if contract provision is ambiguous, review is limited and decision will be reversed only if trial court's determination is plainly wrong or without evidence to support it. D.C. Code 1981, § 17-305(a). Waverly Taylor, Inc. v. Polinger, 583 A.2d 179, 1990 D.C. App. LEXIS 293 (1990).

Evidence, including advantages accruing from construction firm's notations of comments and suggestions on landowner's proposed construction plans, firm's provision of a signed contract for inclusion in landowner's loan application to carry out proposed construction, and firm's provision to landowner of a demolition contractor at a cost savings, supported trial court's finding that landowner benefited from construction firm's services, as regarded its finding that construction firm was entitled to quantum meruit recovery. D.C. Code 1981, § 17-305. TVL Associates v. A & M Constr. Corp., 474 A.2d 156, 1984 D.C. App. LEXIS 369 (1984).

Finding that scaffolding and shoring company had no claim for damages in quantum meruit against successor to original building owner because there was no showing of an understanding between the contractor and such owner that the contractor expected reimbursement from such owner for services rendered prior owner was not plainly wrong. D.C. Code § 17-305(a). Waco Scaffold & Shoring Co. v. 425 Eye Street Associates, 355 A.2d 780, 1976 D.C. App. LEXIS 517 (1976).

Testimony of defendant that plaintiff offered to install snow guards on roof of church building without charge as part of promotional scheme provided substantial basis for finding that no purchase contract, express or implied, was formed between parties. D.C. Code § 17-305(a). Zaleski v. Congregation of Sacred Hearts of Jesus & Mary, 256 A.2d 424, 1969 D.C. App. LEXIS 292 (App. 1969).

Whether defendant had guaranteed corporate obligation to pay for printing of pamphlet relating to history of a nonprofit corporation founded by defendant's wife or whether defendant and his wife had made oral contract to pay for printing were questions for trier of facts, in suit by printer for goods sold and delivered and services rendered. D.C. Code 1961, § 17-305(a).

Dawson v. Drazin, 223 A.2d 375, 1966 D.C. App. LEXIS 238 (App. 1966).

— Costs and attorney fees, scope of review.

A decision to award attorneys' fees is reserved to the sound discretion of the trial court and will be reversed only upon a showing of abuse. Wallasey Tenants Ass'n v. Varner, 892 A.2d 1135, 2006 D.C. App. LEXIS 79 (2006).

An appellate court's scope of review of an award of attorney fees is a limited one because disposition of such motions is firmly committed to the informed discretion of the trial court; therefore, it requires a very strong showing of abuse of discretion to set aside the decision of the trial court. Maybin v. Stewart, 885 A.2d 284, 2005 D.C. App. LEXIS 537 (2005).

Appellate review of trial court's ultimate decision to deny attorney fees as sanction for bad faith is confined to a determination of whether the trial court failed to consider a relevant factor, whether it relied upon an improper factor, and whether the reasons given reasonably support the conclusion. Jung v. Jung, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

Appellate review of trial court's grant or denial of attorney fees as sanction for bad faith is limited; the predicate finding of bad faith vel non is a factual one which is to be reviewed under the clearly erroneous standard, and the decision to award fees will be reversed only for abuse of discretion. Jung v. Jung, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

A decision to award costs is committed to the trial court's discretion, and, upon review, it is not for the appellate court to substitute its discretion for that of the trial court. Pride Transp., Inc. v. Northeastern Pa. Shippers Coop. Ass'n, 832 A.2d 163, 2003 D.C. App. LEXIS 563 (2003).

De novo standard of review applied to the trial court's denial of motion for attorney fees and costs, as the appeal presented a question of law. Pride Transp., Inc. v. Northeastern Pa. Shippers Coop. Ass'n, 832 A.2d 163, 2003 D.C. App. LEXIS 563 (2003).

The Court of Appeals will modify attorney fee award only upon proof of an abuse of discretion. Fed. Mktg. Co. v. Va. Impression Prods. Co., 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Ordinarily, the Court of Appeals expects the trial court to explain how it arrived at its award of attorney fees, though a precise analysis, utilizing each of the Frazier lodestar factors, is not required. Fed. Mktg. Co. v. Va. Impression Prods. Co., 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Where a trial court has refused to impose sanctions, the standard of review is whether the trial court abused its discretion. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

When the party seeking sanctions has alleged bad faith as a basis for seeking those sanctions, the predicate finding of bad faith vel non is a factual one which the appellate court reviews under the clearly erroneous standard. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

The decision to award attorney fees to a party, based on opposing party's bad faith in prosecuting claims, will be reversed only for abuse of discretion. Fischer v. Estate of Flax, 816 A.2d 1, 2003 D.C. App. LEXIS 19 (2003), remanded by 935 A.2d 362, 2007 D.C. App. LEXIS 659 (D.C. 2007), remanded by 935 A.2d 1091, 2007 D.C. App. LEXIS 669 (D.C. 2007).

Reasonableness of defendant's attorney fees and costs as determined by Court of Appeals in prior appeal could not be raised in subsequent appeal. Thoubboron v. Ford Motor Co., 809 A.2d 1204, 2002 D.C. App. LEXIS 602 (2002).

An appeal only from an award of costs does not permit the court to pass upon the merits of the underlying judgment. Del Rosario v. Wang, 804 A.2d 292, 2002 D.C. App. LEXIS 383 (2002).

A challenge to the trial court's statutory authority to award particular costs is reviewed de novo. Del Rosario v. Wang, 804 A.2d 292, 2002 D.C. App. LEXIS 383 (2002).

Orders granting attorney fees are reviewed for abuse of discretion. Delacruz v. Harris, 780 A.2d 262, 2001 D.C. App. LEXIS 195 (2001).

Attorney fees were properly imposed as sanctions upon client, but not attorney, based on client's misrepresentations that he had complied with obligations under settlement agreement to obtain market value appraisal of raw land offered as payment under settlement agreement; client knew that representations were false and attorney reasonably relied upon client's assertion that settlement agreement obligations had been satisfied. D.C. Code 1981, § 17-305(a); Civil Rule 11. Jabbour v. Bassatne, 673 A.2d 201, 1996 D.C. App. LEXIS 51 (1996).

Wage payment law rather than minimum wage law was applicable to former employee's claims against former employer for allegedly unpaid wages and, therefore, denial of former employee's claim for liquidated damages, attorneys' fees and costs in reliance on the minimum wage law was improper, where former employee did not quarrel with hourly rate but sued on basis of wages allegedly due for certain hours of work. D.C. Code §§ 17-305(a), 36-401 et seq., 36-415, 36-415(a), 36-601 et seq., 36-

603(d), 36-608(b). Klingaman v. Holiday Tours, Inc., 309 A.2d 54, 1973 D.C. App. LEXIS 342 (1973).

— Credibility of witnesses, scope of review.

Court of Appeals will not redetermine the credibility of witnesses where the trial court had the opportunity to observe their demeanor and form a conclusion. In re F.W., 870 A.2d 82, 2005 D.C. App. LEXIS 52 (2005).

Appellate court may not redetermine the credibility of witnesses where trial court had the opportunity to observe their demeanor and form a conclusion. In re P.S., 797 A.2d 1219, 2001 D.C. App. LEXIS 260 (2001).

Generally, credibility determinations of the factfinder are entitled to great weight. Murray v. District of Columbia Dep't of Empl. Servs., 765 A.2d 980, 2001 D.C. App. LEXIS 13 (2001).

Credibility of witnesses, upon which validity of an arrest stood or fell, was a matter within province of the jury to decide as trier of fact. D.C. Code § 17-305(a). Burroughs v. United States, 236 A.2d 319, 1967 D.C. App. LEXIS 214 (App. 1967).

— Custody of children, scope of review.

An appellate court will reverse a trial court's ruling on the subject of visitation only for a clear abuse of discretion. Maybin v. Stewart, 885 A.2d 284, 2005 D.C. App. LEXIS 537 (2005).

The proper disposition of a neglected child, including the question whether a non-custodial parent should be granted visitation rights, is committed to the sound discretion of the trial court; the exercise of that discretion is reviewable only for abuse. In re D.B., 879 A.2d 682, 2005 D.C. App. LEXIS 391 (2005).

The proper disposition of a neglected child, including the question whether a non-custodial parent should be granted visitation rights, is committed to the sound discretion of the trial court; the exercise of that discretion is reviewable only for abuse. In re Ko.W., 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

In reviewing child custody determinations, appellate court is constrained to focus its review on best interests of the child, and not on those of the parents vis-a-vis each other. Johnson v. Washington, 756 A.2d 411, 2000 D.C. App. LEXIS 179 (2000).

In reviewing trial court's determination of custody in the case of a child of unmarried parents where both parents have been actively involved in upbringing of the child, the same criteria apply as in custodial cases involving married parents; that is, court is guided by best interests of the child. Johnson v. Washington, 756 A.2d 411, 2000 D.C. App. LEXIS 179 (2000).

Since trial court is in better position to determine what will be best for child, appellate court will not reverse its determination of child custody except for clear abuse of discretion. Johnson v. Washington, 756 A.2d 411, 2000 D.C. App. LEXIS 179 (2000).

On review of child custody determination, appellate court's focus must on whether trial court's ruling was made in best interests of the child, not on whether parent has unclean hands. Johnson v. Washington, 756 A.2d 411, 2000 D.C. App. LEXIS 179 (2000).

Factual findings that inform judge's choice of child custody are reviewed only for clear error and, within limits, choice will be sustained despite errors committed in its exercise. D.C. Code 1981, § 17-305(a). Prost v. Greene, 652 A.2d 621, 1995 D.C. App. LEXIS 1 (1995), remanded by 675 A.2d 471, 1996 D.C. App. LEXIS 73 (D.C. 1996).

In reviewing child custody award, in essence, Court of Appeals looks to whether trial judge has considered all relevant factors and no improper ones, and to whether decision is then supported by substantial reasoning drawn from firm factual foundation in record. D.C. Code 1981, § 17-305(a). Prost v. Greene, 652 A.2d 621, 1995 D.C. App. LEXIS 1 (1995), remanded by 675 A.2d 471, 1996 D.C. App. LEXIS 73 (D.C. 1996).

Where record strongly supported findings and conclusion in custody proceeding, any error in admitting medical and psychiatric evaluations of children by physicians who were not called to testify was harmless. D.C. Code § 17-305(a). Monacelli v. Monacelli, 296 A.2d 445, 1972 D.C. App. LEXIS 277 (1972).

— Damages, scope of review.

Appellate courts must conduct de novo review of a trial court's application of the guideposts for punitive damages to a jury award; exacting appellate review ensures that an award of punitive damages is based upon an application of law, rather than a decisionmaker's caprice. Daka, Inc. v. McCrae, 839 A.2d 682, 2003 D.C. App. LEXIS 752 (2003).

Appellate court will reverse the trial court's denial of a motion for new trial based upon a claim of inadequacy of damages only when the amount of the award evidences prejudice, passion or partiality on the part of the jury or where the verdict appears to be an oversight or mistake, or rest upon consideration of an improper element. Worjloh v. Stephens, 835 A.2d 1093, 2003 D.C. App. LEXIS 684 (2003).

Appellate court reviews a trial court's denial of a motion for a new trial based on an inadequate jury award of damages for an abuse of discretion. Worjloh v. Stephens, 835 A.2d 1093, 2003 D.C. App. LEXIS 684 (2003).

Where nominal damages only could be allowed, the failure to award such damages is not

a ground for reversal. Henson v. Prue, 810 A.2d 912, 2002 D.C. App. LEXIS 669 (2002).

While nominal damages are awarded without proof of actual injury, they imply the smallest appreciable quantity, with one dollar being the amount frequently awarded; however, the law does not concern itself with trifles, and a judgment for plaintiff will not be reversed on appeal for a failure to award nominal damages, even though plaintiff is entitled to recover nominal damages as a matter of law. Henson v. Prue, 810 A.2d 912, 2002 D.C. App. LEXIS 669 (2002).

A trial court's award of damages will be upheld as long as it is a just and reasonable estimate based on relevant data, even if it is not proven with mathematical precision. Hildreth Consulting Eng'Rs, P.C. v. Larry E. Knight, Inc., 801 A.2d 967, 2002 D.C. App. LEXIS 361 (2002).

The trial judge, as the trier of fact, is free to either credit or disregard plaintiff's opinion as to his calculation of damages. Kakaes v. George Washington Univ., 790 A.2d 581, 2002 D.C. App. LEXIS 22 (2002).

Questions of contribution are reviewed de novo. Kakaes v. George Washington Univ., 790 A.2d 581, 2002 D.C. App. LEXIS 22 (2002).

When reviewing the denial of a motion for a new trial based on a claimed inadequate verdict, the Court of Appeals will reverse only when the amount of the award evidences prejudice, passion, or partiality on the part of the jury or the verdict appears to be an oversight or mistake or to rest upon consideration of an improper element. Kakaes v. George Washington Univ., 790 A.2d 581, 2002 D.C. App. LEXIS 22 (2002).

Evidence supported conclusion that automobile accident victim was not entitled to damages for pain and suffering; photographs tended to indicate only a mild impact, victim drove away from the accident without reporting any injuries or pain to investigating police, and he received treatment only for back strain. Kakaes v. George Washington Univ., 790 A.2d 581, 2002 D.C. App. LEXIS 22 (2002).

Refusal to award damages for medical expenses for treating back pain caused by accident was improper; since the jury found that the victim was injured by the collision and the other driver's negligence, the jury could not reasonably discount his damages to zero in the face of medical bills reflecting treatment for the injury caused. Kakaes v. George Washington Univ., 790 A.2d 581, 2002 D.C. App. LEXIS 22 (2002).

The grant of a new trial for an excessive award of damages will be reversed only when the amount of the award exceeds the maximum limit of a reasonable range within which the jury could find. District of Columbia v. Hawkins, 782 A.2d 293, 2001 D.C. App. LEXIS 216 (2001).

Whether to grant a new trial because of excessive damages is a matter within the discretion of the trial court, and appellate court accords great deference to the trial court's decision in this regard and will reverse only for an abuse of discretion; the same is the case where the trial court, in its discretion, might have chosen the lesser remedy of a new trial conditioned on plaintiff's declining to accept a remittitur. District of Columbia v. Hawkins, 782 A.2d 293, 2001 D.C. App. LEXIS 216 (2001).

When appellate court determines whether the standard has been met for an excessive verdict, appellate court must examine the extent and nature of the damages proved by the evidence. District of Columbia v. Hawkins, 782 A.2d 293, 2001 D.C. App. LEXIS 216 (2001).

The trial court's damages award will be upheld as long as it is a just and reasonable estimate based on relevant data, even if it is not proven with mathematical precision. Affordable Elegance Travel, Inc. v. Worldspan, L.P., 774 A.2d 320, 2001 D.C. App. LEXIS 132 (2001).

When trial court refuses to disturb the jury's finding of damages, appellate court will order new trial only when award is so inadequate as to indicate prejudice, passion, or partiality on part of jury, or where it must have been based on oversight, mistake, or consideration of improper element. Lewis v. Voss, 770 A.2d 996, 2001 D.C. App. LEXIS 89 (2001).

— Declarations by third persons, scope of review.

Hearsay testimony of defendant's first defense counsel that a man, who asserted his Fifth Amendment privilege not to testify, had said he owned and discarded tin foil packets allegedly discarded by defendant was inadmissible, absent corroborating evidence that that man had committed the crime. D.C. Code 1981, § 17-305; U.S. Const.Amend. 5. Brown v. United States, 542 A.2d 1231, 1988 D.C. App. LEXIS 75 (1988).

— Dependent, neglected and delinquent children, scope of review.

When the Court of Appeals evaluates an appellant's claim that the evidence is insufficient to support a finding of neglect, it must consider the evidence in the light most favorable to the government, giving full play to the right of the judge to determine credibility, weigh the evidence, and draw reasonable inferences. In re N.P., 882 A.2d 241, 2005 D.C. App. LEXIS 471 (2005).

Failure by mother's appellate counsel to prepare statement of proceedings and evidence in lieu of unavailable transcripts precluded meaningful appellate review of mother's challenge to trial court's determination that child was ne-

glected and resulted in forfeiture of any claim of prejudice from absence of transcript. In re E.T.A., 880 A.2d 264, 2005 D.C. App. LEXIS 415 (2005).

An appellate court will assess whether the evidentiary inquiry made by the trial court in a child neglect proceeding was adequate to permit a truly informed decision, and if the inquiry was superficial, an appellate court may remand for further proceedings. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

Deference is due to a trial court's determination of abuse or neglect in child neglect proceeding and an appellate court will not second-guess the trial judge on a very difficult call. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

In evaluating on appeal whether the government, in a child neglect proceeding, met its burden of proving neglect in all its elements by a preponderance of the evidence, an appellate court must consider the evidence in the light most favorable to the government, giving full play to the right of the judge, as trier of fact, to determine credibility, weigh the evidence, and draw reasonable inferences. In re A.H., 842 A.2d 674, 2004 D.C. App. LEXIS 58 (2004).

In determining whether the government has proven beyond a preponderance of the evidence that a child is neglected, the Court of Appeals must consider the evidence in the light most favorable to the government, giving full play to the right of the judge, as the trier of fact, to determine credibility, weigh the evidence, and draw reasonable inferences. In re Am. V., 833 A.2d 493, 2003 D.C. App. LEXIS 691 (2003).

In reviewing decisions to commit a neglected child to the Department of Human Services (DHS), the Court of Appeals' task is to ensure that the trial court has exercised its discretion within the range of permissible alternatives, based on all relevant factors, and then to consider whether the decision is supported by substantial reasoning. In re Am. V., 833 A.2d 493, 2003 D.C. App. LEXIS 691 (2003).

The Court of Appeals is required to view the evidence in a neglect proceeding in the light most favorable to the District of Columbia and draw every reasonable inference in the District's favor. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

The Court of Appeals review of evidence in a neglect proceeding must respect the prerogative of the trial judge, as the trier of fact, to determine credibility and weigh the evidence. In re Jam.J., 825 A.2d 902, 2003 D.C. App. LEXIS 300 (2003).

In making a disposition in a juvenile delinquency case, the trial court may consider the safety of the community as well as the juvenile's needs, and an informed exercise of discretion will rarely be disturbed on appeal. In re C.S., 804 A.2d 307, 2002 D.C. App. LEXIS 435 (2002).

When the trial court in a juvenile delinquency case enters a ruling at a disposition hearing that is within the limitations established by statutes, it is not the function of the Court of Appeals to review that exercise of discretion. In re C.S., 804 A.2d 307, 2002 D.C. App. LEXIS 435 (2002).

Mother's live-in paramour had a reputational interest sufficient to provide him with standing to challenge finding that he abused mother's daughter, although he could not complain of the disposition of mother's three children in the absence of an appeal by mother. In re G.H., 797 A.2d 679, 2002 D.C. App. LEXIS 86 (2002), remanded by 935 A.2d 328, 2007 D.C. App. LEXIS 656 (D.C. 2007).

In evaluating on appeal whether proof submitted by the Department of Human Services (DHS) is sufficient to support adjudication of child as neglected, the Court of Appeals must consider the evidence in the light most favorable to the government, giving full play to the right of the judge, as the trier of fact, to determine credibility, weigh the evidence, and draw reasonable inferences; however, the trial court's judgment must be set aside if it is plainly wrong or without evidence to support it. In re M.D., 758 A.2d 27, 2000 D.C. App. LEXIS 197 (2000).

In reviewing trial court's termination of parental rights decision, appellate court checks to be sure that trial court has exercised its discretion within the range of permissible alternatives, based on all relevant factors, and no improper factor. In re Tw.P., 756 A.2d 402, 2000 D.C. App. LEXIS 170 (2000).

Substantial evidence supported termination of mother's parental rights; upon child's birth, mother did not take custody of child, who was placed in shelter care at a boarder baby facility, mother was later in a drug treatment program and unable to provide care and shelter for child, mother had never asked for visits with the child, and child's medical and emotional needs were being met by the foster mother. D.C. Code 1981, §§ 16-2353, 17-305(a). In re C.V., 719 A.2d 1246, 1998 D.C. App. LEXIS 213 (1998).

Trial court's finding that stepfather had abused child was supported by the evidence; case was tried by judge without a jury, and judge expressly credited child's testimony that stepfather had touched child's vagina with his hand and had induced child to perform oral sodomy. D.C. Code 1981, § 17-305(a). In re S.G., 581 A.2d 771, 1990 D.C. App. LEXIS 268 (1990).

There was ample evidence in juvenile delinquency proceedings involving charges of burglary and first-degree theft to support trial court's finding that juvenile signed a waiver of his rights before any conversation with police

detective and without any coercion or compulsion, and thus, the Court of Appeals was bound to accept it; furthermore, inherent in such finding was a finding that conversation about which juvenile testified, concerning difference between burglary and receiving stolen property, and whether he would have to be incarcerated, never took place, and thus there was no factual support for juvenile's legal argument that his statement was inadmissible and should have been suppressed. D.C. Code 1981, §§ 17-305(a), 22-1801(b), 22-3812(a). In re D.L., 486 A.2d 1180, 1985 D.C. App. LEXIS 317 (1985).

— Discovery, scope of review.

Court of Appeals did not owe any deference to trial court's determination that expert opinion testimony improperly omitted from pretrial discovery statements was admissible in medical malpractice action, where trial court did not identify and apply the factors enumerated in Weiner v. Kneller. Gubbins v. Hurson, 885 A.2d 269, 2005 D.C. App. LEXIS 535 (2005).

The Court of Appeals reviews discovery orders for abuse of discretion; exercise of discretion must, however, be founded on correct legal principles. Weakley v. Burnham Corp., 871 A.2d 1167, 2005 D.C. App. LEXIS 157 (2005).

Where defendant is entitled to discovery, and the trial court denies it, as well as a request for sanctions, the Court of Appeals determines whether the nondisclosure was prejudicial. Ferguson v. United States, 866 A.2d 54, 2005 D.C. App. LEXIS 7 (2005).

Generally, in reviewing a denial of a request for sanctions under criminal discovery rule mandating pretrial disclosure of written summary of testimony of any expert witness that government intends to use during its case-in-chief at trial, the Court of Appeals must ascertain whether the trial court abused its discretion. Ferguson v. United States, 866 A.2d 54, 2005 D.C. App. LEXIS 7 (2005).

Trial court's failure to consider lesser sanctions than dismissal for plaintiff's failing to appear for independent medical examination (IME) and promptly complying with the discovery schedule warranted reversal of dismissal order. Brown v. Kone, Inc., 841 A.2d 331, 2004 D.C. App. LEXIS 33 (2004).

A court's failure to consider lesser sanctions for discovery violations constitutes a separate basis for reversal of a dismissal order, independent of whether appellees were prejudiced by appellant's delay. Brown v. Kone, Inc., 841 A.2d 331, 2004 D.C. App. LEXIS 33 (2004).

A trial judge's determination whether the sanction imposed for failure to supplement the statement about the subject matter and substance of expected expert testimony is a penalty, too strict or unnecessary under the circumstances, is reviewed for abuse of discretion. Brown v. Kone, Inc., 841 A.2d 331, 2004 D.C. App. LEXIS 33 (2004).

The appellate court reviews the denial of a motion to compel discovery for abuse of discretion resulting in prejudice. So v. 514 10th St. Assocs., L.P., 834 A.2d 910, 2003 D.C. App. LEXIS 634 (2003).

Court of Appeals reviews the trial court's discovery rulings for abuse of discretion. Futrell v. Dep't of Labor Fed. Credit Union, 816 A.2d 793, 2003 D.C. App. LEXIS 33 (2003).

Trial courts enjoy broad discretion in determining whether to grant or deny a motion to compel discovery, and the trial court's decision will not be reversed on appeal unless there has been an abuse of discretion resulting in prejudice. Futrell v. Dep't of Labor Fed. Credit Union, 816 A.2d 793, 2003 D.C. App. LEXIS 33 (2003).

In determining whether discovery sanctions were properly imposed, the Court of Appeals evaluates all pretrial proceedings before the sanctions were imposed. Smith v. Fairfax Vill. Condo., 775 A.2d 1085, 2001 D.C. App. LEXIS 135 (2001).

While the trial court, in entering default or dismissing for failure to comply with a discovery order, is not required to provide reasons for not choosing less severe sanctions, if it does not provide reasons, appellate scrutiny of that choice will be stricter. Smith v. Fairfax Vill. Condo., 775 A.2d 1085, 2001 D.C. App. LEXIS 135 (2001).

The denial of a motion for discovery is reviewed for abuse of discretion. Travelers Indem. Co. v. United Food & Commer. Workers Int'l Union, 770 A.2d 978, 2001 D.C. App. LEXIS 98 (2001).

— Documentary evidence, scope of review.

Photographs of curb condition which caused one plaintiff to fall and sustain injuries were sufficient basis for trial court sitting without jury to infer constructive notice by the District of Columbia and supported recovery on part of plaintiffs. D.C. Code § 17-305(a). District of Columbia v. Megginson, 250 A.2d 571, 1969 D.C. App. LEXIS 211 (App. 1969).

— Forfeiture of property, scope of review.

Remand was necessary for trial court to determine if there would have been any net return on any interest generated by the $14,500 husband deposited into court registry after taking into account bank fees and other charges in husband's action under the Fifth Amendment, which claimed that District's transfer of deposited money to District Treasurer as unclaimed funds over three years old amounted to an uncompensated taking. Arthur v. District of Columbia, 857 A.2d 473, 2004 D.C. App. LEXIS 448 (2004).

Evidence showed by preponderance of evidence that currency and automobile seized from alleged owner facilitated running of illegal lottery and thus property was subject to forfeiture even absent any conviction. D.C. Code 1981, §§ 17-305(a), 22-1505(c). Spencer v. District of Columbia, 615 A.2d 586, 1992 D.C. App. LEXIS 272 (1992).

— Forum non conveniens, scope of review.

The deferential standard of review of a decision on a motion to dismiss for forum non conveniens is not a rubber-stamp; rather, the Court of Appeals applies close scrutiny to the specific factors identified and evaluated by the trial court and, once it is satisfied that the trial court took the proper factors into account, adopts a deferential approach in determining whether the trial court's decision fell within the broad discretion committed to it. Future View, Inc. v. Criticom, Inc., 755 A.2d 431, 2000 D.C. App. LEXIS 144 (2000).

— Fraud actions, scope of review.

Working arrangement between conditional seller of television set and assignee of purchasers' note was tainted such that it bore a "badge of fraud" and supported trial judge's ruling in suit by assignee on note that note was usurious and that assignee could not be given status of holder in due course. D.C. Code §§ 17-305(a), 17-306, 28-3303. Universal Acceptance Corp. v. Marzullo, 260 A.2d 90, 1969 D.C. App. LEXIS 371 (App. 1969).

— Guilty pleas, scope of review.

The determination of whether to allow withdrawal of a guilty plea is left to the sound discretion of the trial court, and reversal will be required only upon a showing of abuse of discretion. Maske v. United States, 785 A.2d 687, 2001 D.C. App. LEXIS 244 (2001).

Evidence in hearing on defendant's postsentencing motion to withdraw guilty plea sustained finding that defendant's guilty plea had been voluntarily entered with full appreciation of consequences and with aid of competent and conscientious counsel with whom he had discussed the case extensively. D.C. Code § 17-305(a). Shepard v. United States, 363 A.2d 291, 1976 D.C. App. LEXIS 359 (1976).

— Identification of accused, scope of review.

Reconstructed photo array permitted Court of Appeals to conduct fair de novo review regarding both suggestibility and reliability of original array, in assault prosecution; police detective who created original array testified that reconstructed array was an accurate representation of original array shown to victim, five of nine photos in array were originals, copies of remaining four photos in array were made from original negatives, and process employed to replicate original array was trustworthy. McCoy v. United States, 781 A.2d 765, 2001 D.C. App. LEXIS 211 (2001).

The appellate court is bound by the trial court's findings regarding an identification procedure, if they are supported by the evidence and in accordance with law. Smith v. United States, 777 A.2d 801, 2001 D.C. App. LEXIS 156 (2001).

Reviewing court is bound by the trial court's findings on whether identification procedures were impermissibly suggestive and whether an identification was reliable if they are supported by the evidence and in accordance with the law. Black v. United States, 755 A.2d 1005, 2000 D.C. App. LEXIS 166 (2000).

In prosecution for armed robbery of victims in ladies' rest room, record supported conclusion that victims' identification testimony rested upon independent basis of victims' face-to-face encounters with their assailant, and court did not err in applying an "independent basis" test to the proffered testimony on claim that the in-court identification testimony properly could be characterized as evidence which resulted from an impermissible exploitation of an illegal arrest. D.C. Code §§ 17-305(a), 22-2901; U.S. Const. Amend. 4. Crews v. United States, 369 A.2d 1063, 1977 D.C. App. LEXIS 425 (1977).

Evidence was sufficient to establish identity of defendant as operator of vehicle involved in high speed chase through city streets. D.C. Code 1961, § 17-305(a). O'Bryant v. District of Columbia, 223 A.2d 799, 1966 D.C. App. LEXIS 242 (App. 1966).

— In general.

In reviewing the grant of a motion to dismiss for failure to state a claim upon which relief may be granted, the Court of Appeals applies the same standard as the trial court: it accepts the allegations of the complaint as true, and construes all facts and inferences in favor of the plaintiff. In re Estate of Curseen v. Ingersoll, 890 A.2d 191, 2006 D.C. App. LEXIS 6 (2006).

The appellate court reviews orders denying motions for reconsideration under an abuse of discretion standard. Tobin v. John Grotta Co., 886 A.2d 87, 2005 D.C. App. LEXIS 547 (2005).

When a federal court certifies a question of District of Columbia law to the District of Columbia Court of Appeals, the Court of Appeals is not limited to the designated question of law and may exercise its prerogative to frame the basic issues as it sees fit for an informed decision. District of Columbia v. Beretta, U.S.A., Corp., 872 A.2d 633, 2005 D.C. App. LEXIS 206 (2005), writ of certiorari denied by 546 U.S. 928, 126 S. Ct. 399, 163 L. Ed. 2d 277, 2005 U.S. LEXIS 7205, 74 U.S.L.W. 3212 (2005).

Mistaken belief of associate judge of the Superior Court that she was limited to reviewing magistrate judge's decision in small claims action for abuse of discretion on issue of dealership's right to recover residual diminution in worth resulting from injury to vehicle after already having been compensated for the reasonable cost of repair did not require a remand or otherwise impair ability of Court of Appeals to dispose of appeal, given that the correct standard of review at any stage of appeal, including ultimate review by Court of Appeals, was de novo. Am. Serv. Ctr. Assocs. v. Helton, 867 A.2d 235, 2005 D.C. App. LEXIS 20 (2005).

The only exceptions to the rule that the appellate court need not consider issues raised for the first time on appeal are extraordinary cases where the possibility of injustice exists. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Arguments that have little, if any, merit are not sufficient to create an exception to the rule that the appellate court is not required to consider issues raised for the first time on appeal. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

The appellate court reviews choice of law questions de novo. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Normally, when reviewing allegations of improper argument by prosecutor, appellate court must determine whether the prosecutor's statements actually were improper and, if so, whether the verdict was substantially swayed by the impropriety. Butts v. United States, 822 A.2d 407, 2003 D.C. App. LEXIS 227 (2003).

On appeal of a discretionary decision, Court of Appeals does not render its own decision of what judgment is most wise under the circumstances presented; rather, it examines the record and the trial court's determination for those indicia of rationality and fairness that will assure it that the trial court's action was proper. In re Orshansky, 804 A.2d 1077, 2002 D.C. App. LEXIS 488 (2002).

Court of Appeals reviews decisions on motions seeking relief from a civil judgment for abuse of discretion. In re W.E.T., 793 A.2d 471, 2002 D.C. App. LEXIS 52 (2002).

The Court of Appeals does not decide more than the occasion demands. In re Kitchings, 779 A.2d 926, 2001 D.C. App. LEXIS 188 (2001).

The Court of Appeals reviews a defendant's assertions regarding the separate decisions to join charges and to deny severance under different standards of review; the assertion of wrongful joinder presents a question of law and is thus subjected to de novo review, whereas severance for prejudice is committed to the sound discretion of the trial court and will not be reversed absent a compromise of the fairness of the trial. In re Kitchings, 779 A.2d 926, 2001 D.C. App. LEXIS 188 (2001).

When reviewing a claim of improper comments by a prosecutor, the Court of Appeals must first determine whether any of the challenged comments were improper; if they were, it must then, viewing the remarks in context, consider the gravity of the impropriety, its relationship to the issue of guilt, the effect of any corrective action by the trial judge, and the strength of the government's case. Parker v. United States, 757 A.2d 1280, 2000 D.C. App. LEXIS 198 (2000).

Court of Appeals reviews the trial court's legal determinations de novo and accepts trial court's findings of fact unless they are clearly erroneous. D.C. Code 1981, § 17-305(a). In re K.I., 735 A.2d 448, 1999 D.C. App. LEXIS 159 (1999).

Function of review on appeal from grant of summary judgment of dismissal precludes conduct of trial de novo and court is confined to review of record on appeal. D.C. Code § 17-305(a). Harmatz v. Zenith Radio Corp., 265 A.2d 291, 1970 D.C. App. LEXIS 284 (App. 1970).

— Injunctive relief, scope of review.

Court of Appeals reviews the trial court's decision in favor of granting a preliminary injunction for abuse of discretion. Feaster v. Vance, 832 A.2d 1277, 2003 D.C. App. LEXIS 566 (2003).

In reviewing the trial court's exercise of discretion to grant or deny preliminary injunctive relief, Court of Appeals' role is not to resolve the merits of the underlying dispute between the litigants, except insofar as the action of the trial court turns on a question of law or statutory interpretation. Feaster v. Vance, 832 A.2d 1277, 2003 D.C. App. LEXIS 566 (2003).

In reviewing a trial court's exercise of discretion in issuing or denying preliminary injunctive relief, Court of Appeals' role is confined to: (1) examining the trial court's findings and conclusions to see if they are sufficiently supported by the record; (2) assuring that the trial court's analysis reflects a resolution of all the issues which necessarily underlie the issuance of an injunction; and (3) inquiring into any other claims of an abuse of discretion by the trial court. Feaster v. Vance, 832 A.2d 1277, 2003 D.C. App. LEXIS 566 (2003).

When reviewing the granting or denial of a preliminary injunction, it is not the task of the Court of Appeals to resolve the overall merits of the dispute between the parties; rather, the role of the Court of Appeals is confined to (1) examining the trial court's findings and conclusions to see if they are sufficiently supported by the record; (2) assuring that the trial court's analysis reflects a resolution of all the issues which necessarily underlie the issuance of an injunction; and (3) inquiring into any other claims of an abuse of discretion by the trial court. Zirkle v. District of Columbia, 830 A.2d 1250, 2003 D.C. App. LEXIS 540 (2003).

Narrow exception to rule that the Court of Appeals will not resolve the overall merits of a dispute between the parties when reviewing the granting or denial of a preliminary injunction occurs when the action of the trial court turns on a question of law or statutory interpretation. Zirkle v. District of Columbia, 830 A.2d 1250, 2003 D.C. App. LEXIS 540 (2003).

Court of Appeals would not resolve the overall merits of the dispute between the parties upon review of order denying employee's motion for a preliminary injunction, pending the outcome of his suit brought under the Whistleblower Protection Act, where the trial court's ruling was based on the facts presented at the hearing, that is, the court held that the facts on which the employee based his claim were insufficient to justify injunctive relief. Zirkle v. District of Columbia, 830 A.2d 1250, 2003 D.C. App. LEXIS 540 (2003).

Decision to grant or deny preliminary injunctive relief is committed to sound discretion of trial court. District of Columbia v. Eastern Trans-Waste of Md., Inc., 758 A.2d 1, 2000 D.C. App. LEXIS 192 (2000).

In reviewing trial court's order modifying and extending temporary restraining order, Court of Appeals is required to: (1) examine trial court's findings and conclusions to see if they are sufficiently supported by record, and (2) assure that trial court's analysis reflects a resolution of all issues which necessarily underlie issuance of an injunction. District of Columbia v. Eastern Trans-Waste of Md., Inc., 758 A.2d 1, 2000 D.C. App. LEXIS 192 (2000).

Decision to grant or deny preliminary injunction is confided to sound discretion of trial judge and is reviewed to determine whether trial court abused its discretion or rested its analysis upon erroneous interpretation of law; judge's factual findings must be sustained if they are supported by record, although permissible exercise of discretion must be founded upon correct legal principles and judge's legal rulings are reviewed de novo. D.C. Code 1981, § 17-305; Civil Rule 52(a). District of Columbia v. Sierra Club, 670 A.2d 354, 1996 D.C. App. LEXIS 7 (1996).

— Insurance and insurers, scope of review.

Automobile insurer failed to appeal denial of motion that uninsured motorist benefits claim should have been dismissed because uninsured motorist was not made a party defendant and, thus, failed to preserve issue for appeal. Allstate Ins. Co. v. Ramos, 782 A.2d 280, 2001 D.C. App. LEXIS 209 (2001).

Whether language in a contract is genuinely ambiguous is a question of law and considered de novo on appeal. Chase v. State Farm Fire & Cas. Co., 780 A.2d 1123, 2001 D.C. App. LEXIS 197 (2001).

Insured's failure to rely on additional coverage provision of homeowners' insurance policy did not preclude court from considering the provision on appeal from summary judgment for the insurer; the Court of Appeals had a duty to read the policy, even though it was not up to the Court to construct a party's legal theories for him or make a tactical judgment. Chase v. State Farm Fire & Cas. Co., 780 A.2d 1123, 2001 D.C. App. LEXIS 197 (2001).

Review of record in suit by insured to recover from health insurer cost for nursing care of insured's partially paralyzed wife showed that trial court erred in concluding that service of licensed nurses outside the hospital was medically necessary as required by policy. D.C. Code § 17-305(a). Group Hospitalization, Inc. v. Westley, 350 A.2d 745, 1976 D.C. App. LEXIS 456 (1976).

Evidence supported finding that testimony of absent insured was vital to defense by insurer in action by pedestrian struck by bus owned by insured's bus company. D.C. Code §§ 11-922(a), 17-305(a). Coleman v. Aetna Ins. Co., 309 A.2d 306, 1973 D.C. App. LEXIS 355 (1973).

Evidence in insured's action to recover under boiler and machinery insurance policy did not support trial court's finding that the work performed by refrigeration engineer on damaged motor of air-conditioning unit was sheer duplication and that the work done was not any more than it was obliged to do under service and maintenance contract. D.C. Code § 17-305(a). Coleman v. Aetna Ins. Co., 309 A.2d 306, 1973 D.C. App. LEXIS 355 (1973).

Evidence supported finding that suitcase and its contents, stolen from backseat of bailed automobile while automobile was located in commercial garage, to which the public did not have free access, was not left in the vehicle "unattended" within meaning of homeowner's policy excluding coverage of property while unattended in or on automobile. D.C. Code

§ 17-305(a). Travelers Ins. Co. v. Tomor, 283 A.2d 827, 1971 D.C. App. LEXIS 240 (1971).

— Judgements, scope of review.

When entertaining motion for judgment as matter of law (JAML), court should review all of evidence in record and, in so doing, may not infringe on province of jury; court may not make determinations regarding credibility of witnesses or weight of evidence. Teneyck v. Omni Shoreham Hotel, 254 F.Supp.2d 17, 2003 U.S. Dist. LEXIS 5174 (2003), affirmed by 365 F.3d 1139, 361 U.S. App. D.C. 214, 2004 U.S. App. LEXIS 8952, 85 Empl. Prac. Dec. (CCH) P41736, 93 Fair Empl. Prac. Cas. (BNA) 1354 (2004).

On motion for a directed verdict, the record must be viewed in the light most favorable to the non-moving party, and that party is entitled to the benefit of every reasonable inference from the evidence. Schecter v. Merchs. Home Delivery, Inc., 892 A.2d 415, 2006 D.C. App. LEXIS 30 (2006).

A directed verdict is appropriate only if, when the evidence is viewed in the light most favorable to the opposing party, there is no legally sufficient evidentiary basis for a reasonable jury to find for the nonmoving party; thus, a verdict may be directed only if it is clear that the plaintiff has not established a prima facie case. Snyder v. George Washington Univ., 890 A.2d 237, 2006 D.C. App. LEXIS 5 (2006).

The Court of Appeals reviews the grant of a judgment as a matter of law de novo, applying the same standards as the trial court. Snyder v. George Washington Univ., 890 A.2d 237, 2006 D.C. App. LEXIS 5 (2006).

Court of Appeals reviews the trial court's ruling in a child support proceeding only for abuse of discretion. Liuksila v. Stoll, 887 A.2d 501, 2005 D.C. App. LEXIS 638 (2005).

The appellate court's inquiry regarding whether judgment notwithstanding the verdict (JNOV) was warranted must be focused on whether the jury would have had to speculate to reach its verdict. Liuksila v. Stoll, 887 A.2d 501, 2005 D.C. App. LEXIS 638 (2005).

The appellate court reviews orders granting summary judgment de novo. Tobin v. John Grotta Co., 886 A.2d 87, 2005 D.C. App. LEXIS 547 (2005).

Court of Appeals reviews grants or denials of motions for summary judgment de novo and applies the same standard as the trial court in reviewing and assessing the record in the light most favorable to the nonmoving party. Tobin v. John Grotta Co., 886 A.2d 87, 2005 D.C. App. LEXIS 547 (2005).

On appeal, a trial court's decision to grant a motion for reconsideration is reviewed for abuse of discretion. In re Estate of Derricotte, 885 A.2d 320, 2005 D.C. App. LEXIS 539 (2005).

When reviewing a trial court decision granting relief from a judgment for unusual and extraordinary situations, Court of Appeals considers whether the trial court recognized that it had discretion and purported to exercise it. Puckrein v. Jenkins, 884 A.2d 46, 2005 D.C. App. LEXIS 497 (2005).

Whether to grant or deny a motion for relief from a judgment due to unusual and extraordinary situations is committed to the sound discretion of the trial court, and the trial court's decision will only be reversed for an abuse of that discretion. Puckrein v. Jenkins, 884 A.2d 46, 2005 D.C. App. LEXIS 497 (2005).

Where a party files a motion for reconsideration asserting an error of law, it is generally treated as a motion to alter or amend a judgment for purposes of appeal. Puckrein v. Jenkins, 884 A.2d 46, 2005 D.C. App. LEXIS 497 (2005).

In considering whether the trial court erred by granting motion for judgment as a matter of law, appellate courts view the evidence in the light most favorable to the nonmoving party, who must be given the benefit of all reasonable inferences to be drawn from the evidence. Smith v. District of Columbia, 882 A.2d 778, 2005 D.C. App. LEXIS 472 (2005).

In reviewing a grant of summary judgment, the Court of Appeals views the record in the light most favorable to the non-moving party. Smith v. District of Columbia, 882 A.2d 778, 2005 D.C. App. LEXIS 472 (2005).

The Court of Appeals must determine whether the party awarded summary judgment demonstrated that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Smith v. District of Columbia, 882 A.2d 778, 2005 D.C. App. LEXIS 472 (2005).

In reviewing a trial court's grant of summary judgment, the Court of Appeals makes an independent review of the record and employs the same standards as does the trial court in initially considering the motion. Smith v. District of Columbia, 882 A.2d 778, 2005 D.C. App. LEXIS 472 (2005).

Court of Appeals reviews a trial court order granting summary judgment de novo. New 3145 Deauville, L.L.C. v. First Am. Title Ins. Co., 881 A.2d 624, 2005 D.C. App. LEXIS 463 (2005).

In reviewing a trial court's ruling on a motion for a judgment as a matter of law, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the party who obtained the jury verdict and should reverse only if no juror could reasonably reach a verdict for the opponent of the motion. District of Columbia v. Zukerberg, 880 A.2d 276, 2005 D.C. App. LEXIS 416 (2005).

When reviewing a trial court's ruling on a motion for a judgment as a matter of law, the

appellate court applies the same standard as the trial court. District of Columbia v. Zukerberg, 880 A.2d 276, 2005 D.C. App. LEXIS 416 (2005).

On appeal, the Court of Appeals must view the evidence in the light most favorable to the party against whom the motion for directed verdict is made, and that party must be given the benefit of all reasonable inferences from the evidence. Burke v. Md. Auto Ins. Fund, 879 A.2d 996, 2005 D.C. App. LEXIS 413 (2005).

Further review of claims that have been litigated and finally decided is not permissible. Shore v. Groom Law Group, 877 A.2d 86, 2005 D.C. App. LEXIS 11 (2005).

Motion for relief from a judgment or order is entrusted to the trial court's discretion, and a ruling on such a motion will be overturned only if that discretion has been abused. Amatangelo v. Schultz, 870 A.2d 548, 2005 D.C. App. LEXIS 46 (2005).

An order denying summary judgment is not a final order, and a denial of a motion for summary judgment is not reviewable on appeal, either during trial or after trial. Amatangelo v. Schultz, 870 A.2d 548, 2005 D.C. App. LEXIS 46 (2005).

Review of a summary judgment is de novo, and the Court of Appeals applies the same substantive standards which are to be applied by the trial court. Amatangelo v. Schultz, 870 A.2d 548, 2005 D.C. App. LEXIS 46 (2005).

The Court of Appeals will affirm the entry of summary judgment if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Columbia Plaza Tenants' Ass'n v. Columbia Plaza L.P., 869 A.2d 329, 2005 D.C. App. LEXIS 29 (2005).

Record on appeal of summary judgment is reviewed in the light most favorable to the appellant, drawing all reasonable inferences in the appellant's favor. Columbia Plaza Tenants' Ass'n v. Columbia Plaza L.P., 869 A.2d 329, 2005 D.C. App. LEXIS 29 (2005).

The Court of Appeals reviews de novo a grant or denial of a motion for summary judgment to determine whether any genuine issue of material fact exists and whether the prevailing party was entitled to judgment as a matter of law. Columbia Plaza Tenants' Ass'n v. Columbia Plaza L.P., 869 A.2d 329, 2005 D.C. App. LEXIS 29 (2005).

In reviewing grant of directed verdict, appellate court views the facts, as the trial court was required to, in the light most favorable to the non-moving party. Burke v. Scaggs, 867 A.2d 213, 2005 D.C. App. LEXIS 16 (2005).

Though the Court of Appeals views the evidence in the light most favorable to the non-moving party, mere conclusory allegations by the non-moving party are legally insufficient to avoid the entry of summary judgment. Jane W. v. President & Dirs. of Georgetown College, 863 A.2d 821, 2004 D.C. App. LEXIS 680 (2004).

In reviewing a trial court's order granting summary judgment, the Court of Appeals conducts an independent review of the record, and the standard of review is the same as the trial court's standard in considering the motion for summary judgment. Jane W. v. President & Dirs. of Georgetown College, 863 A.2d 821, 2004 D.C. App. LEXIS 680 (2004).

Court of Appeals reviews the grant of summary judgment that was unopposed de novo, to make certain that the trial judge did not simply deem the summary judgment motion as conceded. Hefazi v. Stiglitz, 862 A.2d 901, 2004 D.C. App. LEXIS 635 (2004).

In reviewing an order granting a motion for summary judgment, the Court of Appeals must assess the record independently and view it in the light most favorable to the party opposing the motion. Thornton v. Norwest Bank of Minn., 860 A.2d 838, 2004 D.C. App. LEXIS 578 (2004).

The Court of Appeals will affirm a summary judgment upon a finding that the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits support the conclusion that there was no genuine issue of material fact. Hill v. G.E. Capital Mortg. Servs., 859 A.2d 1055, 2004 D.C. App. LEXIS 516 (2004).

In reviewing summary judgment decisions, the Court of Appeals conducts an independent review of the record and applies the same standard as the trial court in considering whether the motion was properly granted. Hill v. G.E. Capital Mortg. Servs., 859 A.2d 1055, 2004 D.C. App. LEXIS 516 (2004).

Court of Appeals conducts an independent review of the record when reviewing summary judgment. Hill v. G.E. Capital Mortg. Servs., 859 A.2d 1055, 2004 D.C. App. LEXIS 516 (2004).

Court of Appeals would treat dismissal of complaint as a grant of summary judgment, where both parties attached documents to their pleadings and trial court considered those documents in rendering its decision. Hill v. G.E. Capital Mortg. Servs., 859 A.2d 1055, 2004 D.C. App. LEXIS 516 (2004).

Trial court's reasons for vacating default entered against wife were not articulated clearly, and thus, remand was necessary so that trial court could address whether good cause had been shown to justify vacating the default and whether any exceptions to the mandate that a verified answer be filed applied to action, where trial court's reasoning for vacating default was that it was contrary to established D.C. statutes and case law. Arthur v. District of Columbia, 857 A.2d 473, 2004 D.C. App. LEXIS 448 (2004).

The decision whether to vacate the entry of default is committed to the sound discretion of the trial court. Arthur v. District of Columbia, 857 A.2d 473, 2004 D.C. App. LEXIS 448 (2004).

Even though trial judge styled his order against wife as a "default judgment," it was clear that it was not a final judgment that terminated the litigation against wife and decided the dispute, and thus, the order was an entry of default, which could be subsequently revisited and vacated by the trial court, where the order contained a footnote stating that the default judgment against wife would be revisited and reconsidered by subsequent trial judge. Arthur v. District of Columbia, 857 A.2d 473, 2004 D.C. App. LEXIS 448 (2004).

Entry of summary judgment is mandated, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. Kibunja v. Alturas, L.L.C., 856 A.2d 1120, 2004 D.C. App. LEXIS 424 (2004).

In reviewing a ruling on a motion for summary judgment, Court of Appeals applies the same standard as the trial court. Kibunja v. Alturas, L.L.C., 856 A.2d 1120, 2004 D.C. App. LEXIS 424 (2004).

Court of Appeals could not consider expert affidavit filed by deed of trust settlors, with motion for reconsideration, four months after summary judgment was granted to purchaser at foreclosure sale, where trial court did not consider affidavit; Court of Appeals could only consider facts that were before trial court at time it ruled. Kibunja v. Alturas, L.L.C., 856 A.2d 1120, 2004 D.C. App. LEXIS 424 (2004).

Summary judgment will be affirmed on appeal if, viewing the record in the light most favorable to the non-moving party, Court of Appeals concludes that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Kibunja v. Alturas, L.L.C., 856 A.2d 1120, 2004 D.C. App. LEXIS 424 (2004).

Extrinsic evidence is not necessary to raise a genuine issue of fact when the records of the party moving for summary judgment are inherently inconsistent. Kibunja v. Alturas, L.L.C., 856 A.2d 1120, 2004 D.C. App. LEXIS 424 (2004).

In reviewing the propriety of a summary judgment, Court of Appeals must determine whether the substantive law was correctly applied. Kibunja v. Alturas, L.L.C., 856 A.2d 1120, 2004 D.C. App. LEXIS 424 (2004).

On appeal of a summary judgment, the Court of Appeals reviews the record in the light most favorable to the appellant as the non-movant, drawing all reasonable inferences in her favor. Kibunja v. Alturas, L.L.C., 856 A.2d 1120, 2004 D.C. App. LEXIS 424 (2004).

A grant or denial of a motion for summary judgment is reviewed de novo to determine whether any genuine issue of material fact exists and whether the prevailing party was entitled to judgment as a matter of law. Kibunja v. Alturas, L.L.C., 856 A.2d 1120, 2004 D.C. App. LEXIS 424 (2004).

The absence of a trial court record did not warrant vacating small claims judgment and ordering a new trial, even though the judgment debtor was not at fault; the Court of Appeals faced a choice to leave undisturbed a judgment property right won in a presumptively error free proceeding or to force the prevailing party to reprove his case if at all possible, and the best balance was to leave the judgment undisturbed. K.C. Enter. v. Jennings, 851 A.2d 426, 2004 D.C. App. LEXIS 275 (2004).

The appellate court reviews de novo the trial court's grant of summary judgment. Wagner v. Sellinger, 847 A.2d 1151, 2004 D.C. App. LEXIS 197 (2004).

Appellate review of motions to relieve a party from a default judgment focuses on four factors: (1) whether the defaulting party had actual notice of the proceeding; (2) whether it acted in good faith; (3) whether it presented an adequate prima facie defense; and (4) whether it acted promptly when notified of the default. Wagner v. Sellinger, 847 A.2d 1151, 2004 D.C. App. LEXIS 197 (2004).

A default is not a judgment, though it precludes the defaulted party from contesting liability; thus, a default is an interlocutory order that is not appealable to the Court of Appeals, and the appellant instead must appeal from the final judgment of default. Wagner v. Sellinger, 847 A.2d 1151, 2004 D.C. App. LEXIS 197 (2004).

Decision whether to relieve party from final judgment is committed in most instances to sound discretion of trial court, and appellate review is deferential and limited. Jones v. Hersh, 845 A.2d 541, 2004 D.C. App. LEXIS 78 (2004).

Remand was required for determination of whether tenant informed clerk of her presence during calendar call in landlord's action seeking possession of his real property, for purpose of determining whether default judgment could be entered against tenant. Jones v. Hersh, 845 A.2d 541, 2004 D.C. App. LEXIS 78 (2004).

Appellate review of the denial of a motion for relief from judgment is limited to determining whether or not the trial court abused its discretion. Brown v. Kone, Inc., 841 A.2d 331, 2004 D.C. App. LEXIS 33 (2004).

A trial court's ruling on a motion for relief from a void judgment is reviewed under an abuse of discretion standard, but only a slight abuse of discretion need be shown to require

reversal. W.H.H. Trice & Co. v. Faris, 829 A.2d 189, 2003 D.C. App. LEXIS 480 (2003).

The Court of Appeals applies the doctrine of offensive collateral estoppel with some caution because it presents issues relating to potential unfairness to a defendant. Howard Univ. v. Lacy, 828 A.2d 733, 2003 D.C. App. LEXIS 469 (2003).

In reviewing the denial of a motion for relief from judgment or order on grounds of mistake, inadvertence, surprise, or excusable neglect, appellate court does not review or determine the merits of the underlying action but only decides whether there has been an abuse of discretion by the trial court. Howard Univ. v. Lacy, 828 A.2d 733, 2003 D.C. App. LEXIS 469 (2003).

Because there is a general preference for trial on the merits, appellate court gives close scrutiny to the denial of a motion seeking relief from a default judgment on grounds of mistake, inadvertence, surprise, or excusable neglect. Howard Univ. v. Lacy, 828 A.2d 733, 2003 D.C. App. LEXIS 469 (2003).

Appellate court reviews de novo the denial of a motion for judgment as a matter of law. Cook v. Edgewood Mgmt. Corp., 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

In reviewing the denial of motion for judgment as matter of law, appellate court must take care to avoid weighing the evidence, passing on the credibility of witnesses, or substituting its judgment for that of the trial court or jury. Cook v. Edgewood Mgmt. Corp., 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

Appellate court reviews a grant of summary judgment de novo to ensure that there is no genuine issue of material fact and that the prevailing parties are entitled to judgment as a matter of law. Robinson v. Samuel C. Boyd & Son, Inc., 822 A.2d 1093, 2003 D.C. App. LEXIS 280 (2003).

In ascertaining on appeal from grant of summary judgment whether any material facts are in dispute, appellate court views the entire record in the light most favorable to the party opposing the motion. Robinson v. Samuel C. Boyd & Son, Inc., 822 A.2d 1093, 2003 D.C. App. LEXIS 280 (2003).

In reviewing a directed verdict, an appellate court views the facts, as the trial court was required to, in the light most favorable to the plaintiff. Carter v. Hahn, 821 A.2d 890, 2003 D.C. App. LEXIS 219 (2003).

The appellate court makes an independent, de novo review of the record in deciding appeals from summary judgment. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

The court must view the record in the light most favorable to the party opposing the motion for summary judgment and resolve any doubts as to the existence of a factual dispute in that party's favor. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

On appeal, the Court of Appeals reviews the grant of a motion for summary judgment de novo, relying on the same standard that was used by the trial court; thus, the Court of Appeals must conduct an independent review of the record, assessing it in the light most favorable to the nonmoving party and resolving against the moving party any doubts about the existence of a material factual dispute. Futrell v. Dep't of Labor Fed. Credit Union, 816 A.2d 793, 2003 D.C. App. LEXIS 33 (2003).

On appeal from the grant of summary judgment, the scope of appellate review is defined by the context of the legal and factual issues as framed by the parties. Futrell v. Dep't of Labor Fed. Credit Union, 816 A.2d 793, 2003 D.C. App. LEXIS 33 (2003).

On appeal from the grant of summary judgment, party is bound by the factual disputes raised before the trial court and cannot raise new factual disputes for the first time on appeal. Futrell v. Dep't of Labor Fed. Credit Union, 816 A.2d 793, 2003 D.C. App. LEXIS 33 (2003).

The Court of Appeals reviews a motion for judgment as a matter of law by applying the same standard as the trial court. Majeska v. District of Columbia, 812 A.2d 948, 2002 D.C. App. LEXIS 739 (2002).

Appellate court's review of the grant of summary judgment is de novo. Boulton v. Inst. of Int'l Educ., 808 A.2d 499, 2002 D.C. App. LEXIS 557 (2002).

While appellate court reviews the grant or denial of a motion for relief from judgment for abuse of discretion, because there is a strong presumption favoring adjudication on the merits, appellate court examines closely the trial court's refusal to set aside a default judgment. Lester v. District of Columbia, 806 A.2d 206, 2002 D.C. App. LEXIS 515 (2002).

When reviewing the denial of a motion to vacate a default judgment, appellate court considers the particular facts of the case to determine whether the movant had actual notice of the proceeding, acted promptly after learning of the default judgment, proceeded in good faith, and presented a prima facie adequate defense; appellate court also considers whether the nonmoving party would be prejudiced. Lester v. District of Columbia, 806 A.2d 206, 2002 D.C. App. LEXIS 515 (2002).

Court of Appeals reviews a grant of summary judgment de novo to ensure that there is no

genuine issue of material fact and that the prevailing party is entitled to judgment as a matter of law. Lester v. District of Columbia, 806 A.2d 206, 2002 D.C. App. LEXIS 515 (2002).

In ascertaining whether any material facts are in dispute, so as to preclude summary judgment, Court of Appeals views the entire record and it does so in the light most favorable to the party opposing the motion for summary judgment. Lester v. District of Columbia, 806 A.2d 206, 2002 D.C. App. LEXIS 515 (2002).

In evaluating challenge to the denial of motion for judgment as matter of law, appellate court applies the same strict legal standard as a trial court does in ruling on the motion in the first instance, viewing the evidence in the light most favorable to the non-moving party and giving that party the benefit of every reasonable inference. AMTRAK v. McDavitt, 804 A.2d 275, 2002 D.C. App. LEXIS 394 (2002).

Appellate court must affirm the denial of a defendant's motion for judgment as a matter of law in negligence action in which jury returned only a general verdict so long as the evidence, viewed in the light most favorable to plaintiff, was sufficient to justify submission of any one of plaintiff's theories of negligence, even if the evidence did not justify submission of the other theories. AMTRAK v. McDavitt, 804 A.2d 275, 2002 D.C. App. LEXIS 394 (2002).

The Court of Appeals reviews summary judgments de novo. Air Line Pilots Ass'n v. Twin City Fire Ins. Co., 803 A.2d 1001, 2002 D.C. App. LEXIS 391 (2002).

On appeal of a summary judgment, the Court of Appeals reviews the facts in the record in the light most favorable to the non-moving party. Air Line Pilots Ass'n v. Twin City Fire Ins. Co., 803 A.2d 1001, 2002 D.C. App. LEXIS 391 (2002).

Genuine issues of material fact, whether employment handbook created a contract, whether employee was discharged in accordance with restructuring plan, and whether employee was at-will, precluded summary judgment in action for wrongful discharge. Dantley v. Howard Univ., 801 A.2d 962, 2002 D.C. App. LEXIS 365 (2002).

Review of a summary judgment is de novo. Dantley v. Howard Univ., 801 A.2d 962, 2002 D.C. App. LEXIS 365 (2002).

In reviewing a summary judgment, the Court of Appeals must independently review the record in the light most favorable to the nonmovant to determine whether genuine issues of material fact exist and whether the movant is entitled to judgment as a matter of law. Dantley v. Howard Univ., 801 A.2d 962, 2002 D.C. App. LEXIS 365 (2002).

In reviewing a summary judgment, the Court of Appeals must resolve against the movant any doubt regarding the existence of a factual dispute. Dantley v. Howard Univ., 801 A.2d 962, 2002 D.C. App. LEXIS 365 (2002).

In reviewing a trial court order granting a summary judgment motion, the appellate court conducts an independent review of the record. Deutsch v. Barsky, 795 A.2d 669, 2002 D.C. App. LEXIS 76 (2002).

The appellate court views the record in the light most favorable to the party opposing the summary judgment motion. Deutsch v. Barsky, 795 A.2d 669, 2002 D.C. App. LEXIS 76 (2002).

Court of Appeals conducts de novo review of a trial court's grant of summary judgment. Stephenson v. ADA, 789 A.2d 1248, 2002 D.C. App. LEXIS 6 (2002).

On appeal from an order granting a motion for summary judgment, the record must be viewed in the light most favorable to the party opposing the motion. Trilon Plaza v. Comptroller of N.Y., 788 A.2d 146, 2001 D.C. App. LEXIS 256 (2001).

The Court of Appeals reviews the grant of a motion for summary judgment de novo, applying the same standard utilized by the trial court. Grant v. May Dep't Stores Co., 786 A.2d 580, 2001 D.C. App. LEXIS 249 (2001).

In reviewing the correctness of a judgment notwithstanding the verdict (judgment n.o.v.), appellate court considers the evidence in the light most favorable to the party that prevailed before the jury. Haight v. District of Columbia, 783 A.2d 590, 2001 D.C. App. LEXIS 222 (2001).

Standard of reviewing judgment notwithstanding the verdict (judgment n.o.v.) that is granted in negligence action on basis of contributory negligence is whether, on the best view of plaintiff's evidence, fair and reasonable jurors would be compelled to conclude that plaintiff was contributorily negligent, keeping in mind that defendant had burden of proof on that issue. Haight v. District of Columbia, 783 A.2d 590, 2001 D.C. App. LEXIS 222 (2001).

On appeal from a judgment as a matter of law, the appellate court applies the same standard as the trial court in determining whether a juror could reach a verdict in favor of the non-moving party. Haight v. District of Columbia, 783 A.2d 590, 2001 D.C. App. LEXIS 222 (2001).

On review of summary judgment, Court of Appeals must view the evidence presented in the light most favorable to nonmoving party. Brown v. Argenbright Sec., Inc., 782 A.2d 752, 2001 D.C. App. LEXIS 218 (2001).

Summary judgment is reviewed de novo. Brown v. Argenbright Sec., Inc., 782 A.2d 752, 2001 D.C. App. LEXIS 218 (2001).

Review is de novo on appeal from a summary judgment. Chase v. State Farm Fire & Cas. Co., 780 A.2d 1123, 2001 D.C. App. LEXIS 197 (2001).

The Court of Appeals reviews a grant of a motion for summary judgment de novo. Woodland v. Dist. Council 20, 777 A.2d 795, 2001 D.C. App. LEXIS 148 (2001).

On appeal from the grant of summary judgment, the Court of Appeals must view the record in the light most favorable to the party opposing the motion, and must resolve any doubt as to the existence of a factual dispute against the moving party. Taylor v. District of Columbia, 776 A.2d 1208, 2001 D.C. App. LEXIS 151 (2001).

The Court of Appeals' review of the trial court's order granting summary judgment is de novo. Angulo v. Gochnauer, 772 A.2d 830, 2001 D.C. App. LEXIS 116 (2001).

The standard of review of a summary judgment is the same as that of the trial court, i.e., whether there are any genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. Weishapl v. Sowers, 771 A.2d 1014, 2001 D.C. App. LEXIS 100 (2001).

The Court of Appeals may affirm summary judgment for reasons different from those relied upon by the trial court if they are apparent from the record and were pleaded by the parties. Travelers Indem. Co. v. United Food & Commer. Workers Int'l Union, 770 A.2d 978, 2001 D.C. App. LEXIS 98 (2001).

On appeal from a summary judgment, the Court of Appeals conducts a de novo review of the record and applies the same principles employed by the trial court in initially considering the motion. Travelers Indem. Co. v. United Food & Commer. Workers Int'l Union, 770 A.2d 978, 2001 D.C. App. LEXIS 98 (2001).

The Court of Appeals on appeal of a summary judgment must view the record and draw all reasonable inferences in the light most favorable to the appellant, and a motion for summary judgment should be denied unless the moving party can show that no reasonable juror could find for the non-moving party. Travelers Indem. Co. v. United Food & Commer. Workers Int'l Union, 770 A.2d 978, 2001 D.C. App. LEXIS 98 (2001).

To obtain summary relief, a movant must show that the legal basis of the decision on review is narrow and clear-cut, and must demonstrate that the facts of the case are uncomplicated and undisputed. Travelers Indem. Co. v. United Food & Commer. Workers Int'l Union, 770 A.2d 978, 2001 D.C. App. LEXIS 98 (2001).

On appeal from a final judgment after trial, the correctness of a pretrial denial of summary judgment is ordinarily not subject to review. Wagner v. Georgetown Univ. Med. Ctr., 768 A.2d 546, 2001 D.C. App. LEXIS 55 (2001).

An appellate court has discretion to uphold a summary judgment under a legal theory different from that applied by the trial court, and rest affirmance on any ground that finds support in the record, provided it proceeds cautiously so as to avoid denying the opposing party a fair opportunity to dispute the facts material to the new theory. Wagner v. Georgetown Univ. Med. Ctr., 768 A.2d 546, 2001 D.C. App. LEXIS 55 (2001).

When reviewing a summary judgment, the Court of Appeals makes an independent review of the record and applies the same standard as the trial court's standard for initially considering the motion. O'Malley v. Chevy Chase Bank, 766 A.2d 964, 2001 D.C. App. LEXIS 34 (2001).

In determining whether there is an issue of material fact precluding summary judgment, the Court of Appeals must view the record in the light most favorable to the nonmoving party. O'Malley v. Chevy Chase Bank, 766 A.2d 964, 2001 D.C. App. LEXIS 34 (2001).

The Court of Appeals' review of the grant of a summary judgment motion is de novo. O'Malley v. Chevy Chase Bank, 766 A.2d 964, 2001 D.C. App. LEXIS 34 (2001).

On appeal from the grant of a summary judgment motion, the Court of Appeals must conduct an independent review of the record, and must be assured not only that no issue of material fact existed but also that the prevailing party was legally entitled to the judgment. O'Malley v. Chevy Chase Bank, 766 A.2d 964, 2001 D.C. App. LEXIS 34 (2001).

On appeal from the grant of a summary judgment motion, the Court of Appeals applies the same standards as the trial court. O'Malley v. Chevy Chase Bank, 766 A.2d 964, 2001 D.C. App. LEXIS 34 (2001).

The grant or denial of a motion for summary judgment is reviewed de novo. Fisher v. Government Emples. Ins. Co., 762 A.2d 35, 2000 D.C. App. LEXIS 270 (2000).

Court of Appeals reviews grant of motion for summary judgment de novo, applying the same standard as that utilized by trial court. Hollins v. Fannie Mae, 760 A.2d 563, 2000 D.C. App. LEXIS 246 (2000).

On summary judgment, court undertakes independent review of the record and evaluates it in light most favorable to party opposing the motion, resolving against movant any doubts about existence of material factual dispute. Hollins v. Fannie Mae, 760 A.2d 563, 2000 D.C. App. LEXIS 246 (2000).

On appeal from the trial court's entry of summary judgment, appellate court conducts a de novo review of the record and applies the same principles employed by the trial court in initially considering the motion. Velasquez v. Essex Condo. Ass'n, 759 A.2d 676, 2000 D.C. App. LEXIS 225 (2000).

Normally, the Court of Appeals reviews the grant or denial of a motion to vacate a judgment for abuse of discretion; however, because there is a strong judicial presumption favoring adjudication on the merits, it scrutinizes closely a

trial court's refusal to set aside a default judgment. Venison v. Robinson, 756 A.2d 906, 2000 D.C. App. LEXIS 171 (2000).

When reviewing the denial of a motion to vacate a default judgment, the Court of Appeals considers the particular facts of the case to determine whether the movant had actual notice of the proceeding, acted promptly after learning of the default judgment, proceeded in good faith, and presented a prima facie adequate defense, and also whether the non-moving party would be prejudiced. Venison v. Robinson, 756 A.2d 906, 2000 D.C. App. LEXIS 171 (2000).

The focus of prompt action factor, as considered on review of a denial of a motion to vacate a default judgment, is on the promptness with which the party against whom the default judgment was entered took action to challenge it after learning about it; however, this presupposes that the party was unaware of the proceedings against him up to that point. Venison v. Robinson, 756 A.2d 906, 2000 D.C. App. LEXIS 171 (2000).

— Jurisdiction, scope of review.

The Court of Appeals reviews the decision of the trial court regarding issues of subject matter jurisdiction de novo. Meshel v. Ohev Sholom Talmud Torah, 869 A.2d 343, 2005 D.C. App. LEXIS 49 (2005).

Court of Appeals reviews questions concerning the trial court's jurisdiction de novo. In re J.W., 837 A.2d 40, 2003 D.C. App. LEXIS 697 (2003).

A facial attack on court's subject matter jurisdiction requires an appellate court to determine jurisdiction by looking only at the face of the complaint and taking the allegations in the complaint as true, while a factual attack may occur at any stage of the proceedings and plaintiff bears the burden of proof that jurisdiction does in fact exist. Heard v. Johnson, 810 A.2d 871, 2002 D.C. App. LEXIS 656 (2002).

The Court of Appeals reviews questions regarding subject matter jurisdiction de novo. A. L. Eastmond & Sons, Inc. v. D.C. Contract Appeals Bd., 795 A.2d 52, 2002 D.C. App. LEXIS 75 (2002).

— Jury instructions, scope of review.

In reviewing a trial court's decision to deny a requested jury instruction on appellants' theory of the case, appellate court views the evidence in the light most favorable to appellants. Gubbins v. Hurson, 885 A.2d 269, 2005 D.C. App. LEXIS 535 (2005).

Even if the court presents the instruction in a more general way, so long as it fully informs the jury on the law, the refusal to give the requested instruction does not warrant reversal. Jung v. George Washington Univ., 875 A.2d 95, 2005 D.C. App. LEXIS 264 (2005), amended by 883 A.2d 104, 2005 D.C. App. LEXIS 490 (D.C. 2005).

The trial court has broad discretion in formulating jury instructions, and its refusal to grant a request for a particular instruction is not a ground for reversal if the court's charge, considered as a whole, fairly and accurately states the applicable law. Jung v. George Washington Univ., 875 A.2d 95, 2005 D.C. App. LEXIS 264 (2005), amended by 883 A.2d 104, 2005 D.C. App. LEXIS 490 (D.C. 2005).

In determining whether there was sufficient evidence presented to warrant a requested jury instruction, the Court of Appeals reviews the record in the light most favorable to the party requesting the instruction. Wash. Metro. Area Transit Auth. v. Cross, 849 A.2d 1021, 2004 D.C. App. LEXIS 246 (2004).

Ordinarily the Court of Appeals must presume that the jury obeyed the jury instruction and ignored the inadmissible evidence; nevertheless, the presumption of jury compliance with instructions is inapplicable if the contrary appears, or the circumstances are very unusual. Brown v. NAS, 844 A.2d 1113, 2004 D.C. App. LEXIS 71 (2004).

In determining whether a proposed jury instruction on a party's theory of the case was properly denied, the Court of Appeals reviews the record in the light most favorable to the requesting party. Haidak v. Corso, 841 A.2d 316, 2004 D.C. App. LEXIS 34 (2004).

When reviewing jury instructions, Court of Appeals must look at the instructions as a whole in assessing whether they constituted prejudicial error. Chadbourne v. Kappaz, 779 A.2d 293, 2001 D.C. App. LEXIS 184 (2001).

In prosecution for aggravated assault while armed, defendant did not waive appellate review of contention that an instruction defining "serious bodily injury" should have been given, even though trial judge, in order to respond to a note sent by jury during deliberations, proposed to give several definitions, but yielded to defendant's preference to let the jury decide on term's meaning; as both courses of action were incorrect, defendant did not waive claim by choosing one. Zeledon v. United States, 770 A.2d 972, 2001 D.C. App. LEXIS 97 (2001).

In determining whether the evidence presented supports the requested jury instruction, the Court of Appeals must view that evidence in the light most favorable to the party requesting the instruction. Johnson v. United States, 756 A.2d 458, 2000 D.C. App. LEXIS 177 (2000).

— Jury selection, scope of review.

When reviewing the sufficiency of the evidence, the Court of Appeals recognizes no distinction between direct and circumstantial evidence. Bodrick v. United States, 892 A.2d 1116, 2006 D.C. App. LEXIS 80 (2006).

Trial court's decision to accept juror's ambiguous claim that she could be impartial despite her very unpleasant experience as a defendant in a lawsuit, and her attitudes toward tort reform and plaintiffs, did not constitute harmless error for purposes of personal injury action brought by injured motorist; court's decision resulted in substantial prejudice to motorist who had only three peremptory challenges, all of which were used, and damages verdict rendered by the jury was less than the actual medical expenses and lost wages that were uncontested at trial. Lewis v. Voss, 770 A.2d 996, 2001 D.C. App. LEXIS 89 (2001).

Absent an abuse of discretion during voir dire and substantial prejudice to the accused, the trial court will be upheld. Doret v. United States, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

A harmless error standard applies to cases challenging the voir dire due to the refusal of the trial court to permit follow-up questions designed to weed out juror bias. Doret v. United States, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

Erroneous refusal to permit the defendant during voir dire to pose follow-up questions to prospective jurors who had close friends or family members in the law enforcement field was harmless in prosecution for murder and drug offenses; the case depended heavily on the testimony of civilian witnesses, rather than that of law enforcement officers, and even if a juror with close friends working for the Department of Justice and the Parole Commission was biased in favor of law enforcement officers, that bias would not have affected jury deliberations and the verdict in light of the testimony by participants in the drug operation. Doret v. United States, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

Court of Appeals may reverse trial court's finding of fact on existence or nonexistence of discriminatory intent in exercise of peremptory challenge when that finding is plainly wrong or without evidence to support it. D.C. Code 1981, § 17-305(a). Epps v. United States, 683 A.2d 749, 1996 D.C. App. LEXIS 186 (1996).

— Jury trial, scope of review.

In ruling on a motion for judgment as a matter of law, if there is room for a difference of opinion, the wise course is for the trial judge to allow the case to go to the jury. Schecter v. Merchs. Home Delivery, Inc., 892 A.2d 415, 2006 D.C. App. LEXIS 30 (2006).

The question whether the trial judge properly directed a verdict, and thus took the case away from the jury, is one of law; accordingly, the Court of Appeals gives no deference to the trial judge's ruling, and its review of judge's order is de novo. Schecter v. Merchs. Home Delivery, Inc., 892 A.2d 415, 2006 D.C. App. LEXIS 30 (2006).

Court of Appeals reviews the trial court's decision to deny a request for a jury trial de novo. Sarete, Inc. v. 1344 U St. Ltd. P'ship, 871 A.2d 480, 2005 D.C. App. LEXIS 148 (2005).

Statutory remedies for reacquiring possession of property are exclusive, and an action will lie in tort against a landlord who evicts a tenant without legal process. Sarete, Inc. v. 1344 U St. Ltd. P'ship, 871 A.2d 480, 2005 D.C. App. LEXIS 148 (2005).

Appellate court has no power to retry factual issues; court's authority is restricted to a review for errors of law. District of Columbia v. Harris, 770 A.2d 82, 2001 D.C. App. LEXIS 96 (2001).

Unless the verdict evidences prejudice, passion or partiality on the part of the jury or appears to be the result of oversight, mistake, or consideration of an improper element, the appellate court has no basis for overturning it. District of Columbia v. Harris, 770 A.2d 82, 2001 D.C. App. LEXIS 96 (2001).

Where the correctness of the lower court's decision depends upon a determination of fact which only a jury could make but which has not been made, the appellate court cannot take the place of the jury. Wagner v. Georgetown Univ. Med. Ctr., 768 A.2d 546, 2001 D.C. App. LEXIS 55 (2001).

In recognizing the jury's role in weighing the evidence, the Court of Appeals, when reviewing a denial of a motion for judgment of acquittal, will defer to the jury's credibility determinations, as well as to its ability to draw justifiable inferences of fact. Johnson v. United States, 756 A.2d 458, 2000 D.C. App. LEXIS 177 (2000).

Appellate court must recognize the jury's province to weigh the evidence, determine the credibility of witnesses, and make justifiable inferences from the evidence. Johnson v. United States, 756 A.2d 458, 2000 D.C. App. LEXIS 177 (2000).

In reviewing both a suppression ruling and a jury verdict, the Court of Appeals views the evidence in the light most favorable to the prevailing party. Clark v. United States, 755 A.2d 1026, 2000 D.C. App. LEXIS 151 (2000).

To extent that appellant disputed factual matters decided by the jury, it could not prevail pursuant to statute providing that, when the issues of fact are tried by jury, the appellate court reviews the case only as to matters of law. D.C. Code 1981, § 17-305. Aurora Assocs. v. Bykofsky, 750 A.2d 1242, 2000 D.C. App. LEXIS 83 (2000).

Credibility determinations are within province of trier of fact and may not be disturbed unless plainly wrong or without evidence to support them. D.C. Code 1981, § 17-305. Rubin v. Lee, 577 A.2d 1158, 1990 D.C. App. LEXIS 171 (1990).

Where, with respect to either an allegedly false arrest or the subsequent alleged malicious prosecution the issue of probable cause has been submitted to the jury because of conflicting evidence, the jury's finding will not be reviewed on appeal. D.C. Code § 17-305(a). Nichols v. Woodward & Lothrop, Inc., 322 A.2d 283, 1974 D.C. App. LEXIS 247 (1974), writ of certiorari denied by 419 U.S. 1108, 95 S. Ct. 780, 42 L. Ed. 2d 804, 1975 U.S. LEXIS 231 (1975).

On appeal from jury's verdict, factual questions must be resolved in appellee's favor. D.C. Code § 17-305(a). Prather v. Hill, 250 A.2d 690, 1969 D.C. App. LEXIS 214 (App. 1969).

— Labor relations actions, scope of review.

University professor, whose application for tenure was denied by university, did not establish that university breached its duty of good faith and fair dealing by interfering with her ability to conduct research; although university was negligent in not providing professor with contamination-free lab, university took steps to make other lab space available to professor as it did for other professors whose research was compromised by contamination, and university ultimately installed protective hood in professor's lab to control or eliminate contamination, and despite these efforts on part of university, professor did not make sufficient progress with respect to scholarly productivity. Allworth v. Howard Univ., 890 A.2d 194, 2006 D.C. App. LEXIS 4 (2006).

Where a university or college has adopted tenure and promotion rules or contract provisions, a court may determine whether there has been substantial compliance with those rules, but in determining whether a university has complied with its own rules or contract, court must be careful not to substitute its judgment improperly for the academic judgment of the school. Allworth v. Howard Univ., 890 A.2d 194, 2006 D.C. App. LEXIS 4 (2006).

Appellate courts review a grant or denial of a motion for summary judgment de novo to determine whether any genuine issue of material fact exists and whether the prevailing party was entitled to judgment as a matter of law. Allworth v. Howard Univ., 890 A.2d 194, 2006 D.C. App. LEXIS 4 (2006).

In considering the trial court's review of an Office of Employee Appeals (OEA) decision, the Court of Appeals conducts the identical review that it would undertake if this appeal had been heard initially in the appellate court. District of Columbia v. Fremeau, 869 A.2d 711, 2005 D.C. App. LEXIS 45 (2005).

In reviewing the decision of an agency in a workers' compensation case, Court of Appeals defers to the decision of the Director of Department of Employment Services, so long as the decision is supported by substantial evidence; if there is substantial evidence to support the finding, evidence contrary to that finding does not permit the court to substitute its judgment for that of the Director. Wash. Post v. D.C. Dep't of Empl. Servs., 853 A.2d 704, 2004 D.C. App. LEXIS 372 (2004).

Workers' compensation claimant's argument that his application for review of disability order denying his claim for workers' compensation benefits was timely filed based on information given to him by Office of General Counsel advising his that his application for review would be considered timely so long as it was mailed within 30 days from date of compensation order, was not preserved for appellate review, where claimant did not give Director of Department of Employment Services (DOES) notice of such argument. Thompson v. D.C. Dep't of Empl. Servs., 848 A.2d 593, 2004 D.C. App. LEXIS 203 (2004).

While the Court of Appeals is the final authority on questions of statutory construction, and its review is de novo, the Court will defer to the interpretation of the Director of Department of Employment Services of the Workers' Compensation Act if his interpretation is reasonable in light of the Act's language, its legislative history, and judicial precedent. Hart v. D.C. Dep't of Empl. Servs., 843 A.2d 746, 2004 D.C. App. LEXIS 59 (2004).

Court of Appeals would defer to reasonable interpretation by Director of Department of Employment Services of statutory exemption from workers' compensation coverage for employee and employer, who were not residents of District of Columbia (DOC) and whose employment contract was entered into in another state, while employee was temporarily or intermittently working in DOC, as referring to duration and frequency of employee's actual physical presence in DOC, rather than virtual presence of claimant, a nonresident professional wrestler who was injured in match in DOC, through weekly television broadcasts of his wrestling bouts and daily sales of his action figure dolls and other personal memorabilia. Hart v. D.C. Dep't of Empl. Servs., 843 A.2d 746, 2004 D.C. App. LEXIS 59 (2004).

The reviewing court must affirm the ruling of the Director of the Department of Employment Services (DOES) unless it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Burge v. D.C. Dep't of Empl. Servs., 842 A.2d 661, 2004 D.C. App. LEXIS 53 (2004).

The reviewing court defers to the decision of the Director of Department of Employment Services (DOES) in a workers' compensation case, so long as the Director's decision is supported by substantial evidence. Burge v. D.C. Dep't of Empl. Servs., 842 A.2d 661, 2004 D.C. App. LEXIS 53 (2004).

The Court of Appeals' review of the legal conclusions of the Director of the Department of Employment Services in a workers' compensation case is de novo. Mills v. D.C. Dep't of Empl. Servs., 838 A.2d 325, 2003 D.C. App. LEXIS 751 (2003).

Under the Administrative Procedure Act, in workers' compensation cases, the Court of Appeals must determine first, whether the agency has made a finding of fact on each material contested issue of fact; second, whether the agency's findings are supported by substantial evidence on the record as a whole; and third, whether the conclusions of the Director of the Department of Employment Services flow rationally from those findings and comport with the applicable law. Mills v. D.C. Dep't of Empl. Servs., 838 A.2d 325, 2003 D.C. App. LEXIS 751 (2003).

In workers' compensation cases, appellate court defers to the decision of the agency director provided that the decision flows rationally from facts supported by substantial evidence in the record. Marriott Int'l v. D.C. Dep't of Empl. Servs., 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

Appellate court must determine whether the findings of the Director of the District of Columbia Department of Employment Services (DCDOES) in workers' compensation case are supported by substantial evidence on the record as a whole, and whether the Director's conclusions flow rationally from those findings and comport with the applicable law. Marriott Int'l v. D.C. Dep't of Empl. Servs., 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

Appellate court's review of the legal conclusions of Director of the District of Columbia Department of Employment Services (DCDOES) is de novo in workers' compensation case. Marriott Int'l v. D.C. Dep't of Empl. Servs., 834 A.2d 882, 2003 D.C. App. LEXIS 629 (2003).

Generally, Court of Appeals reviews the legal rulings of the Director of the Department of Employment Services in a workers' compensation case de novo, but otherwise defers to the Director's determination so long as it rationally flows from the facts and is supported by substantial evidence on the record. Wash. Metro. Area Transit Auth. v. D.C. Dep't of Empl. Servs., 827 A.2d 35, 2003 D.C. App. LEXIS 422 (2003).

The Court of Appeals reviews the decision of the Director of the Department of Employment Services (DOES) to determine whether it is supported by substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in a workers' compensation matter. Gross v. D.C. Dep't of Empl. Servs., 826 A.2d 393, 2003 D.C. App. LEXIS 419 (2003).

The Court of Appeals reviews questions of law de novo, deferring to the interpretation of the workers' compensation statute the Director of the Department of Employment Services (DOES) enforces unless the interpretation conflicts with the statute, is inconsistent with the governing regulation, or otherwise is contrary to established legal doctrine. Gross v. D.C. Dep't of Empl. Servs., 826 A.2d 393, 2003 D.C. App. LEXIS 419 (2003).

The Court of Appeals reviews the decision of the Director of the Department of Employment Services (DOES) to determine whether it is supported by substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in a workers' compensation matter. Fred F. Blanken & Co. v. D.C. Dep't of Empl. Servs., 825 A.2d 894, 2003 D.C. App. LEXIS 303 (2003).

The Court of Appeals reviews questions of law de novo, deferring to the interpretation of the workers' compensation statute the Director of the Department of Employment Services (DOES) enforces unless the interpretation conflicts with the statute, is inconsistent with the governing regulation, or otherwise is contrary to established legal doctrine. Fred F. Blanken & Co. v. D.C. Dep't of Empl. Servs., 825 A.2d 894, 2003 D.C. App. LEXIS 303 (2003).

When reviewing a decision in a workers' compensation case by the Director of Department of Employment Services (DOES), Court of Appeals looks to see: (1) whether the agency has made a finding of fact on each material contested issue of fact; (2) whether substantial evidence of record supports each finding; and (3) whether the conclusions of law follow rationally from the findings. Cather v. D.C. Dep't of Empl. Servs., 808 A.2d 766, 2002 D.C. App. LEXIS 558 (2002).

Court of Appeals, in workers' compensation cases, reviews decision of the Director, Department of Employment Services, under the substantial evidence standard, pursuant to which the court will not disturb the agency's decision if it flows rationally from the facts which are supported by substantial evidence in the record. Sibley Mem. Hosp. v. D.C. Dep't of Empl. Servs., 805 A.2d 974, 2002 D.C. App. LEXIS 501 (2002).

Review of a trial judge's decision not to require a university to grant a faculty member tenure is deferential. Kakaes v. George Washington Univ., 790 A.2d 581, 2002 D.C. App. LEXIS 22 (2002).

In a workers' compensation case, the Court of Appeals defers to the determination of the Director of the Department of Employment Services, as long as the Director's decision flows rationally from the facts, and those facts are supported by substantial evidence on the record. Upchurch v. D.C. Dep't of Empl. Servs., 783 A.2d 623, 2001 D.C. App. LEXIS 229 (2001).

Substantial evidence review utilized by the Director of the Department of Employment Services (DOES) on a hearing examiner's decision presents an issue of law which a reviewing court is in a position to address without need for deference to the agency's decision. Muhammad v. District of Columbia Dep't of Empl. Servs., 774 A.2d 1107, 2001 D.C. App. LEXIS 171 (2001).

To meet the substantial evidence standard of review utilized by the Director of the Department of Employment Services (DOES) on a hearing examiner's decision: (1) the hearing examiner's underlying decision must state findings of fact on each material, contested factual issue; (2) those findings must be based on substantial evidence; and (3) the conclusions of law must follow rationally from the findings. Muhammad v. District of Columbia Dep't of Empl. Servs., 774 A.2d 1107, 2001 D.C. App. LEXIS 171 (2001).

Trial court's finding that former employee whose employment had been terminated without notice was entitled to recover shortages in back pay from employer but was not entitled to a bonus or to two weeks' separation pay was supported by evidence in employee's action against employer. D.C. Code § 17-305(a). Freas v. Gitomer, 256 A.2d 573, 1969 D.C. App. LEXIS 306 (App. 1969).

In suit by sociologist to recover payment for services performed at defendant's request, jury's verdict that she had prepared research prospectus for compensation at defendant's request, and that defendant had refused to pay reasonable compensation for her work, was sustained by the evidence and was not clearly erroneous, even though there was conflicting evidence. D.C. Code § 17-305(a). Freas v. Gitomer, 256 A.2d 573, 1969 D.C. App. LEXIS 306 (App. 1969).

— Landlord and tenant actions, scope of review.

Enforcement of residential apartment lease covenant restricting occupants of apartment subject to landlord's written consent was not unfair, even though landlord acquiesced in breach of covenant for over five years, where tenant failed to show that landlord was not induced by tenant's promise to comply with covenant when lease was made and breach of tenant's promise to limit occupancy is proper basis for eviction. D.C. Code 1981, §§ 17-305(a), 45-2551(b). Grubb v. WM. Calomiris Invest Corp., 588 A.2d 1144, 1991 D.C. App. LEXIS 77 (1991).

Refusal to grant equitable relief to tenant after tenant cured breach of covenant restricting occupants of apartment subject to landlord's written consent by having unauthorized resident move out shortly before trial was not abuse of discretion where tenant was in clear violation of lease and had never attempted to cure breach during statutory notice and cure period. D.C. Code 1981, §§ 17-305(a), 45-2551(b). Grubb v. WM. Calomiris Invest Corp., 588 A.2d 1144, 1991 D.C. App. LEXIS 77 (1991).

Landlord could enforce covenant in lease of residential property which restricted occupancy of apartment subject to landlord's written consent, even though landlord acquiesced in occupancy of apartment by third party for more than five years, since landlord gave tenant statutory notice and opportunity to cure default and tenant failed to cause third party to vacate apartment or obtain landlord's written consent to third party's continued occupancy. D.C. Code 1981, §§ 17-305(a), 45-2551(b). Grubb v. WM. Calomiris Invest Corp., 588 A.2d 1144, 1991 D.C. App. LEXIS 77 (1991).

Trial court's determination that landlord did not constructively evict tenant when landlord leased space in building to child care center was supported by record and not contrary to law; mere letting of premises to child care center did not make landlord responsible for whatever interference may have been caused by invitees of child care center, there was nothing in lease which restricted landlord's ability to lease other premises in building, and tenant did not complain to landlord prior to giving notice that it was terminating lease. D.C. Code 1981, § 17-305(a). International Com. on English in Liturgy v. Schwartz, 573 A.2d 1303, 1990 D.C. App. LEXIS 97 (1990).

Trans-Lux equitable relief was available to tenant, who had concededly tendered whole amount owing to landlord; violation of terms of lease by failure to pay rent on first of each month was not willful under circumstances which included tenant's work-related injuries and landlord's practice of accepting rent through the tenth of the month without penalty. D.C. Code 1981, §§ 17-305(a), 45-2551(b). Pritch v. Henry, 543 A.2d 808, 1988 D.C. App. LEXIS 107 (1988).

Evidence, although conflicting, was sufficient to support trial court's conclusion that lessor had not acquiesced in lessee's residential use of premises. D.C. Code 1981, § 17-305(a). City Wide Learning Center, Inc. v. William C. Smith & Co., 488 A.2d 1310, 1985 D.C. App. LEXIS 290 (1985).

In reviewing factual and legal findings of Rental Accommodations Commission, role of Court of Appeals is closely circumscribed to

examination of whether agency's conclusions were based on substantial evidence. D.C. Code §§ 1-1510, 17-305. Tenants Council of Tiber Island-Carrollsburg Square v. District of Columbia Rental Accommodations Com., 426 A.2d 868, 1981 D.C. App. LEXIS 213 (1981).

Landlord who, in early or mid-August, informed month-to-month tenant that she would have to vacate by September 1 or agree to rent increase, waived requirement of 30 days' written notice and was estopped to rely on statute relating to termination of tenancy and was not entitled to rent for September although tenant only gave oral notice on August 22 and did not comply with statutory requirement. D.C. Code §§ 17-305, 45-902, 45-908. Sklar v. Hightower, 342 A.2d 57, 1975 D.C. App. LEXIS 426 (1975).

Even though lease provided that tenant would maintain premises so as to comply with ordinances, laws and regulations for use of premises as a beauty salon, landlord had duty to make structural changes and improvements on premises necessary to bring premises into compliance with building regulations for an occupancy permit. D.C. Code § 17-305(a). Dravillas v. Vega, 294 A.2d 363, 1972 D.C. App. LEXIS 240 (1972).

— Legal conclusions, scope of review.

Trial court's calculation of amount of lien for delinquent water and sewer charges was not clearly erroneous in action seeking recovery pursuant to lien; while there was no clear explanation as to why the method used was the appropriate method of calculating the amount of the lien, associated testimony and computer balances supported the trial court's findings.(Per Fisher, J., with one Judge concurring.) ETDH Assocs. v. Waterfall Ventures, LLC, 999 A.2d 22, 2010 D.C. App. LEXIS 349 (2010).

Appellate review of a trial judge's decision on a motion to dismiss for failure to state a claim, as of any ruling on a question of law, is de novo. Richardson v. Easterling, 878 A.2d 1212, 2005 D.C. App. LEXIS 379 (2005).

The standard of review of a dismissal for lack of subject matter jurisdiction is de novo because the issue of subject matter jurisdiction is a question of law. Pardue v. Ctr. City Consortium Schs. of the Archdiocese of Wash., Inc., 875 A.2d 669, 2005 D.C. App. LEXIS 270 (2005), writ of certiorari denied by 546 U.S. 1003, 126 S. Ct. 619, 163 L. Ed. 2d 506, 2005 U.S. LEXIS 8243, 74 U.S.L.W. 3288, 96 Fair Empl. Prac. Cas. (BNA) 1440 (2005).

The Court of Appeals reviews the trial court's legal conclusions de novo, but factual findings are treated as presumptively correct unless they are clearly erroneous or unsupported by the record. Pardue v. Ctr. City Consortium Schs. of the Archdiocese of Wash., Inc., 875 A.2d 669, 2005 D.C. App. LEXIS 270 (2005), writ of certiorari denied by 546 U.S. 1003, 126 S. Ct. 619, 163 L. Ed. 2d 506, 2005 U.S. LEXIS 8243, 74 U.S.L.W. 3288, 96 Fair Empl. Prac. Cas. (BNA) 1440 (2005).

Where the matter under review is a question of law, the Court of Appeals exercises de novo review. Independence Mgmt. Co. v. Anderson & Summers, LLC, 874 A.2d 862, 2005 D.C. App. LEXIS 252 (2005).

In reviewing the dismissal of an action for failure to state a claim, the appellate court conducts a de novo review of the record, construing all facts and inferences in the light most favorable to the plaintiffs and taking the complaint's allegations as true. District of Columbia v. Beretta, U.S.A., Corp., 872 A.2d 633, 2005 D.C. App. LEXIS 206 (2005), writ of certiorari denied by 546 U.S. 928, 126 S. Ct. 399, 163 L. Ed. 2d 277, 2005 U.S. LEXIS 7205, 74 U.S.L.W. 3212 (2005).

The sufficiency vel non of the complaint raises a question of law, and the Court of Appeals therefore owes no deference to the trial court and reviews de novo an order dismissing complaint for failure to state a claim upon which relief can be granted. Sarete, Inc. v. 1344 U St. Ltd. P'ship, 871 A.2d 480, 2005 D.C. App. LEXIS 148 (2005).

Whether corporation that operated restaurant on leased premises or its two shareholders had the status of a tenant was a legal question which the Court of Appeals would review de novo, on appeal in corporation's and shareholders' action against landlord for breach of contract and wrongful eviction. Sarete, Inc. v. 1344 U St. Ltd. P'ship, 871 A.2d 480, 2005 D.C. App. LEXIS 148 (2005).

Whether, on the duly established facts, a defendant was subjected to custodial interrogation without the benefit of Miranda warnings is a question of law, which the Court of Appeals reviews de novo. Hill v. United States, 858 A.2d 435, 2004 D.C. App. LEXIS 426 (2004).

Whether the three-day mailing extension in District of Columbia rule permitting such extensions when notice was served by mail refers to calendar days or to business days was a question of law, which Court of Appeals would consider de novo. Faggins v. Fischer, 853 A.2d 132, 2004 D.C. App. LEXIS 293 (2004).

Appellate review of trial court's decision on motion for relief from judgment on ground that judgment is void is not deferential; it is de novo. Jones v. Hersh, 845 A.2d 541, 2004 D.C. App. LEXIS 78 (2004).

To the extent that a trial court's ruling on a motion to intervene as a right is based on questions of law, it is reviewed de novo; to the extent that it is based on questions of fact, it is ordinarily reviewed for abuse of discretion. McPherson v. D.C. Hous. Auth., 833 A.2d 991, 2003 D.C. App. LEXIS 619 (2003).

Appellate court reviews de novo the legal issues in a contribution action and is bound, like trial court, by the jury's factual findings unless the trial court has granted an appropriate and timely post-trial motion which in effect sets aside the jury's verdict. M. Pierre Equip. Co. v. Griffith Consumers Co., 831 A.2d 1036, 2003 D.C. App. LEXIS 559 (2003).

The Court of Appeals' review of legal rulings of the District of Columbia Contract Appeals Board is de novo, for it is emphatically the province and duty of the judicial department to say what the law is. Belcon Inc. v. D.C. Water & Sewer Auth., 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

The Court of Appeals reviews questions of law de novo. Anderson v. Abidoye, 824 A.2d 42, 2003 D.C. App. LEXIS 286 (2003).

The grant or denial of a continuance of trial rests within the sound discretion of a trial judge, to whom the appellate court accords wide latitude. Fischer v. Estate of Flax, 816 A.2d 1, 2003 D.C. App. LEXIS 19 (2003), remanded by 935 A.2d 362, 2007 D.C. App. LEXIS 659 (D.C. 2007), remanded by 935 A.2d 1091, 2007 D.C. App. LEXIS 669 (D.C. 2007).

The appellate court reviews the grant of directed verdict de novo, applying the same standards as the trial court. Doe v. Medlantic Health Care Group, Inc., 814 A.2d 939, 2003 D.C. App. LEXIS 2 (2003).

The Court of Appeals reviews legal questions essentially de novo. Perkins v. D.C. Bd. of Zoning Adjustment, 813 A.2d 206, 2002 D.C. App. LEXIS 732 (2002).

An appellate court reviews denial of a motion to dismiss for lack of subject matter jurisdiction de novo. Heard v. Johnson, 810 A.2d 871, 2002 D.C. App. LEXIS 656 (2002).

The Court of Appeals reviews choice of law questions de novo. Herbert v. District of Columbia, 808 A.2d 776, 2002 D.C. App. LEXIS 595 (2002).

The Court of Appeals review of the grant of judgment of dismissal for failure to state a claim is de novo. Kovach v. District of Columbia, 805 A.2d 957, 2002 D.C. App. LEXIS 510 (2002).

An appellate court reviews de novo a trial court's legal conclusions. Hildreth Consulting Eng'Rs, P.C. v. Larry E. Knight, Inc., 801 A.2d 967, 2002 D.C. App. LEXIS 361 (2002).

Motion for continuance is addressed to sound discretion of trial court and ruling thereon will not be reversed on appeal absent clear showing of abuse of discretion. Rymer v. Pool, 799 A.2d 371, 1992 D.C. App. LEXIS 340 (1992).

The question whether the Superior Court has subject matter jurisdiction over a case presents a narrow question of law, which the Court of Appeals reviews de novo. District of Columbia v. Stokes, 785 A.2d 666, 2001 D.C. App. LEXIS 242 (2001).

While the appellate court will defer to the trial court's findings of fact regarding the motion to suppress, the appellate court reviews the trial court's conclusions of law de novo. Davis v. United States, 781 A.2d 729, 2001 D.C. App. LEXIS 202 (2001).

In a case tried without a jury, the appellate court addresses legal issues de novo, but the judge's findings of fact can be reversed only if they are plainly wrong or without evidence to support them. Beeton v. District of Columbia, 779 A.2d 918, 2001 D.C. App. LEXIS 191 (2001).

The application of the relevant legal principles to undisputed facts is reviewed de novo. Beeton v. District of Columbia, 779 A.2d 918, 2001 D.C. App. LEXIS 191 (2001).

On appeal from a judgment finding a child to be neglected, the Court of Appeals must view the evidence in the light most favorable to the District and draw every reasonable inference in the District's favor. In re C.C.J, 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

Whether the evidence in a bench trial was sufficient to support the trial court's judgment is a question of law reviewed de novo. Drevenak v. Abendschein, 773 A.2d 396, 2001 D.C. App. LEXIS 118 (2001).

In reviewing the sufficiency of the evidence to support the judgment in a bench trial, the Court of Appeals views the evidence in the light most favorable to the prevailing party. Drevenak v. Abendschein, 773 A.2d 396, 2001 D.C. App. LEXIS 118 (2001).

Appellate court reviews trial court's denial of motions for new trial for abuse of discretion. Lewis v. Voss, 770 A.2d 996, 2001 D.C. App. LEXIS 89 (2001).

The trial court's conclusion that a hearsay statement is against the declarant's penal interest is a legal question reviewed de novo. Doret v. United States, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

Court of Appeals would defer to trial court's finding of fact, in prosecution for threats to do bodily harm, that police officer's asking defendant what he said while defendant was handcuffed was an expression of surprise to the alleged threat and not an attempt to interrogate, but it would review de novo the trial court's legal conclusion that the statement therefore did not constitute custodial interrogation within the meaning of Miranda. Clark v. United States, 755 A.2d 1026, 2000 D.C. App. LEXIS 151 (2000).

As to trial court's factual findings, Court of Appeals considers with some deference, whether findings are supported by evidence presented; however, Court considers de novo whether trial court erred as to its legal conclu-

sions. Clark v. United States, 755 A.2d 1026, 2000 D.C. App. LEXIS 151 (2000).

When confronted with issue of law, Court of Appeals reviews trial court's legal conclusions de novo. Clark v. United States, 755 A.2d 1026, 2000 D.C. App. LEXIS 151 (2000).

Court of Appeals' review of trial court's legal conclusions is de novo. D.C. Code 1981, § 17-305(a). Bingham v. Goldberg, Marchesano, Kohlman, Inc., 637 A.2d 81, 1994 D.C. App. LEXIS 14 (1994).

Trial court's legal conclusions are always subject to Court of Appeals' review, and Court of Appeals will reverse trial court's decision that is based on errors of law. D.C. Code 1981, § 17-305(a). Hutchison Bros. Excavating Co. v. District of Columbia, 511 A.2d 3, 1986 D.C. App. LEXIS 350 (1986).

— Limitation of actions, scope of review.

Compliance with notice statute governing claims against the District of Columbia is a question of law that the Court of Appeals reviews de novo. District of Columbia v. Arnold & Porter, 756 A.2d 427, 2000 D.C. App. LEXIS 173 (2000).

Since the evidence directed to the period from early 1975 to mid-1976 was meager and did not clearly establish "legal disability" of the decedent, whose property was sold at 1975 tax sale, and since the evidence of incompetency as to the period from late 1976 onward was circumstantially relevant but far from compelling, the trial court's holding that decedent's administrator did not demonstrate by a preponderance of the evidence that decedent was legally disabled so as to toll the statutory period of redemption was not clearly wrong or without evidence to support it. D.C. Code §§ 17-305(a), 21-1501, 47-1003. Nelson-Bey v. Robinson, 408 A.2d 999, 1979 D.C. App. LEXIS 505 (1979).

— Long-arm jurisdiction, scope of review.

Allegations of agent's activities within local forum showed sufficient minimum contacts to subject nonresident principals to local jurisdiction under long-arm statute, in view of evidence that agent solicited and actively pursued business activities resulting in contract executed locally. D.C. Code 1981, §§ 13-423(a)(1), 17-305(a); U.S. Const.Amends. 5, 14. Smith v. Jenkins, 452 A.2d 333, 1982 D.C. App. LEXIS 465 (1982).

In event of presentation of additional facts materially different from those in record on appeal, reviewing court's decision that there was jurisdiction over nonresident defendants under long-arm statute did not preclude trial court from reconsidering question of jurisdiction. D.C. Code 1981, §§ 13-423(a)(1), 17-305(a); U.S. Const.Amends. 5, 14. Smith v. Jenkins, 452 A.2d 333, 1982 D.C. App. LEXIS 465 (1982).

Attorney, hired by Connecticut corporation and sent to District of Columbia to establish office, negotiate on behalf of corporation with Food and Drug Administration, and litigate against FDA, could sue corporation to recover fees allegedly due in superior court under District of Columbia "long-arm statute"; attorney was shown to be agent of corporation, and to have established "minimum contacts" necessary for personal jurisdiction over corporation in District to be consistent with due process. D.C. Code §§ 13-423, 13-423(a)(1), 17-305(a); U.S. Const. Amends. 1, 5, 14. Rose v. Silver, 394 A.2d 1368, 1978 D.C. App. LEXIS 370 (1978).

— Marriage dissolution actions, scope of review.

Review of order entered following trial of divorce action was limited to determination whether, in light of entire record, auditor's findings as approved by trial court were so incongruent with evidence as to be plainly wrong or without evidence to support them. D.C. Code § 17-305(a); D.C. Code SCR, Dom.Rel.Rules 52(a), 53(e)(2). Quarles v. Quarles, 353 A.2d 285, 1976 D.C. App. LEXIS 493 (1976), writ of certiorari denied by 429 U.S. 922, 97 S. Ct. 321, 50 L. Ed. 2d 290, 1976 U.S. LEXIS 3335 (1976).

Evidence warranted finding that wife without good cause deserted husband and that, with one exception, alleged acts of cruelty occurred subsequent to the separation. D.C. Code § 17-305(a). Roberson v. Roberson, 297 A.2d 769, 1972 D.C. App. LEXIS 297 (1972).

Granting of divorce and custody of child to wife on ground of husband's voluntary separation in excess of one year without cohabitation was not plainly wrong or without evidence to support it. D.C. Code § 17-305(a). Lindau v. Lindau, 286 A.2d 864, 1972 D.C. App. LEXIS 334 (1972).

Evidence, in divorce action, supported finding that husband had not committed any acts of cruelty against wife or otherwise by his actions contributed to their separation. D.C. Code § 17-305(a). Springer v. Springer, 248 A.2d 822, 1969 D.C. App. LEXIS 194 (App. 1969).

On appeal from judgment awarding absolute divorce, function of the court of appeals is limited to reviewing record and the court of appeals may disturb trial court's ultimate findings and conclusions only if they are clearly erroneous or without evidence to support them. D.C. Code § 17-305(a). Springer v. Springer, 248 A.2d 822, 1969 D.C. App. LEXIS 194 (App. 1969).

— Motor vehicle operation, scope of review.

Evidence was sufficient to support hearing officer's finding that operator involved in accident had been driving under influence of alco-

hol and hearing officer's resulting restriction of operator's permit, though operator apparently suffered head injury which he claimed was cause of confusion and slow reaction. D.C. Code § 17-305(b)(2)(E). Griffin v. Heath, 257 A.2d 488, 1969 D.C. App. LEXIS 331 (App. 1969).

— Nonjury or bench trial, scope of review.

On appeal from a non-jury trial, the trial court's findings of fact will not be disturbed unless they are clearly erroneous, and the evidence will be viewed in the light most favorable to the prevailing party. Hinton v. Sealander Brokerage Co., 917 A.2d 95, 2007 D.C. App. LEXIS 74 (2007).

In resolving an appeal from a non-jury trial, appellate court may review both as to the facts and the law, but the judgment may not be set aside except for errors of law unless it appears that the judgment is plainly wrong or without evidence to support it. Hinton v. Sealander Brokerage Co., 917 A.2d 95, 2007 D.C. App. LEXIS 74 (2007).

In reviewing bench trials, Court of Appeals will not reverse unless defendant establishes that the trial court's factual findings are plainly wrong, or without evidence to support them. Dorsey v. United States, 902 A.2d 107, 2006 D.C. App. LEXIS 358 (2006).

In an appeal arising from a matter tried without jury, the appellate court must decide independently whether the trial judge committed errors of law or the judgment was plainly wrong or without evidence to support it. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

In reviewing bench trials, the Court of Appeals will not reverse, unless an appellant has established that the trial court's factual findings are plainly wrong or without evidence to support them. Harkins v. United States, 810 A.2d 895, 2002 D.C. App. LEXIS 654 (2002).

In appeal arising from bench trial, Court of Appeals must decide independently whether trial judge committed errors of law. D.C. Code 1981, § 17-305. Hopkins v. Akins, 637 A.2d 424, 1993 D.C. App. LEXIS 119 (1993).

Trial court's findings of fact in nonjury trial will be set aside only if clearly erroneous or without evidentiary support. D.C. Code 1981, § 17-305(a). Hopkins v. Akins, 637 A.2d 424, 1993 D.C. App. LEXIS 119 (1993).

In reviewing bench trials, Court of Appeals will not reverse conviction for insufficiency of the evidence unless defendant establishes that trial court's factual findings are plainly wrong or without evidence to support them. D.C. Code 1981, § 17-305(a). Mihas v. United States, 618 A.2d 197, 1992 D.C. App. LEXIS 341 (1992).

In reviewing findings by trial court which sat without jury, Court of Appeals may reverse only if findings are clearly erroneous and without evidentiary support, or if there was an error of law. D.C. Code 1981, § 17-305(a). Bernstein v. Noble, 487 A.2d 231, 1985 D.C. App. LEXIS 318 (1985).

In reviewing an order of judgment where the trial court sat as trier of fact, except if there has been an error of law, Court of Appeals may not set aside the judgment unless it appears to be plainly wrong or without evidence to support it. D.C. Code 1981, § 17-305(a). Earle v. District of Columbia, 479 A.2d 877, 1984 D.C. App. LEXIS 462 (1984).

The Court of Appeals is not to set aside the trial court's judgment, except for errors of law, unless the Court of Appeals finds that it was plainly wrong or unsupported by the evidence. D.C. Code 1981, § 17-305(a). In re S.P., 465 A.2d 823, 1983 D.C. App. LEXIS 453 (1983).

Normally when a case is tried without a jury, the District of Columbia Court of Appeals will not set aside a trial court's judgment except for errors of law, unless the judgment is plainly wrong or without evidence to support it. D.C. Code 1981, § 17-305(a). Riggs v. Aetna Ins. Co., 454 A.2d 818, 1983 D.C. App. LEXIS 283 (1983).

In reviewing a decision of the trial court sitting without a jury, Court of Appeals may not set aside its judgment except for errors of law, unless it appears that the judgment is plainly wrong or without evidence to support it. D.C. Code § 17-305(a). Robinson v. Jones, 429 A.2d 1372, 1981 D.C. App. LEXIS 265 (1981).

Where civil action was tried before court sitting without jury, District of Columbia Court of Appeals could not set aside judgment except for errors of law unless it appeared that judgment was plainly wrong or without evidence to support it. D.C. Code § 17-305(a). Gray v. Gray, 412 A.2d 1208, 1980 D.C. App. LEXIS 268 (1980).

The Court of Appeals will defer to the findings and conclusions of the trial court in a case tried without a jury if supported by evidence and if not in conflict with legal principles by which Court of Appeals is bound. D.C. Code§ 17-305(a). United States v. Walton, 411 A.2d 333, 1979 D.C. App. LEXIS 487 (1979).

Where case is tried without a jury, trial court's judgment both as to facts and law may not be set aside except for errors of law unless it appears that judgment is plainly wrong or without evidence to support it. D.C. Code § 17-305. Sundown, Inc. v. Canal Square Associates, 390 A.2d 421, 1978 D.C. App. LEXIS 545 (1978).

Where a case is tried without a jury, the Court of Appeals will not set aside the lower court's finding unless it is plainly wrong or without evidence to support it. D.C. Code § 17-

305(a). Ashby v. United States, 363 A.2d 685, 1976 D.C. App. LEXIS 360 (1976).

In cases tried without jury, questions as to credibility of witnesses and weight of evidence are within province of trial judge and Court of Appeals may not disturb his judgments unless plainly wrong or without evidence to support them. D.C. Code § 17-305(a). In re A.B.H., 343 A.2d 573, 1975 D.C. App. LEXIS 233 (1975).

Scope of review by Court of Appeals is limited to a review of the law only when the issues of fact have been tried by a jury. D.C. Code § 17-305(a). In re A.B.H., 343 A.2d 573, 1975 D.C. App. LEXIS 233 (1975).

In case tried without jury, Court of Appeals may review both as to facts and law, but judgment may not be set aside except for legal errors unless it appears that judgment is plainly wrong or without evidence to support it. D.C. Code § 17-305(a). Reese v. Crosby, 280 A.2d 526, 1971 D.C. App. LEXIS 192 (1971).

Court of appeals is proscribed from reversing trial court sitting without jury on factual matters unless it appears that judgment is plainly wrong or without evidence to support it. D.C. Code § 17-305(a). $3265.28 in United States Currency v. District of Columbia, 249 A.2d 516, 1969 D.C. App. LEXIS 202 (App. 1969).

— Parental rights termination, scope of review.

The decision to appoint a guardian or conservator is committed to the court's considerable discretion, and Court of Appeals reviews it only for abuse of that discretion. In re Orshansky, 804 A.2d 1077, 2002 D.C. App. LEXIS 488 (2002).

A trial court's weighing of statutory factors in determining the best interests of the child in a termination of parental rights proceeding is reviewed for abuse of discretion. In re P.S., 797 A.2d 1219, 2001 D.C. App. LEXIS 260 (2001).

— Partnership actions, scope of review.

Since there was ample evidence, in action for accounting of proceeds accruing under partnership, to support trial court's findings of fact, and conclusions flowed from findings and reflected no error of law on part of trial court, which concluded that plaintiff was entitled to amount she had contributed to partnership, the Court of Appeals was required to affirm. D.C. Code § 17-305(a); D.C. Code SCR, Civil Rule 52(a). Cooper v. Saunders-Hunt, 365 A.2d 626, 1976 D.C. App. LEXIS 402 (1976).

— Pleadings, scope of review.

In order to survive dismissal of a complaint for failure to state a claim upon which relief can be granted, a plaintiff's statement of the claim must simply give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. In re Estate of Curseen v. Ingersoll, 890 A.2d 191, 2006 D.C. App. LEXIS 6 (2006).

Standing alone, the denial of a Motion for Reconsideration is not an appealable order; however, if a Motion for Reconsideration has tolled the timing requirements for an appealable order, and an appeal is timely noted following the denial of the Motion for Reconsideration, both the appealable order and the Motion for Reconsideration may be reviewed. Puckrein v. Jenkins, 884 A.2d 46, 2005 D.C. App. LEXIS 497 (2005).

In determining whether a complaint is legally sufficient to state a claim, the court must accept plaintiff's allegations as true and construe them in the light most favorable to plaintiff. Richardson v. Easterling, 878 A.2d 1212, 2005 D.C. App. LEXIS 379 (2005).

The only issue before the appellate court, in reviewing a dismissal for failure to state a claim, is whether the complaint is legally sufficient, and to test its adequacy, the appellate court applies the same principles as those utilized by the trial court. Richardson v. Easterling, 878 A.2d 1212, 2005 D.C. App. LEXIS 379 (2005).

Court of Appeals would not resolve manufacturer's claim that former boiler service worker's opposition to its motion for summary judgment contained inadmissible documents not produced during discovery, where trial judge did not address issue in his order, and no motion was made to strike documents or to obtain a ruling on manufacturer's objection. Weakley v. Burnham Corp., 871 A.2d 1167, 2005 D.C. App. LEXIS 157 (2005).

Court of Appeals will affirm a dismissal for failure to state a claim upon which relief can be granted only when it appears, beyond doubt, that the plaintiff can prove no set of facts in support of its claim which would entitle it to relief. Weakley v. Burnham Corp., 871 A.2d 1167, 2005 D.C. App. LEXIS 157 (2005).

When reviewing the grant of a motion to dismiss for failure to state a claim upon which relief can be granted, the Court of Appeals, like the trial court, must construe the complaint in the light most favorable to the plaintiff, while taking the facts alleged in the complaint as true. Weakley v. Burnham Corp., 871 A.2d 1167, 2005 D.C. App. LEXIS 157 (2005).

The Court of Appeals reviews de novo the trial court's ruling on a motion to dismiss for failure to state a claim, and the Court applies the same substantive standard as that applied by the trial judge. Jordan Keys & Jessamy, LLP v. St. Paul Fire & Marine Ins. Co., 870 A.2d 58, 2005 D.C. App. LEXIS 42 (2005).

The Court of Appeals will not disturb the trial court's determination that good cause has not been shown for failing to comply with the rules governing service of process, as grounds for vacating the dismissal of the complaint,

without a clear showing of abuse of discretion. Thompson v. District of Columbia, 863 A.2d 814, 2004 D.C. App. LEXIS 639 (2004).

A court should dismiss a complaint for failure to state a claim only if it appears beyond doubt that the plaintiff can prove no set of facts in support of her claim which would entitle her to relief. Taylor v. Akin, Gump, Strauss, Hauer & Feld, L.L.P., 859 A.2d 142, 2004 D.C. App. LEXIS 450 (2004).

On appeal from trial court's refusal to vacate the entry of default against defendants, Court of Appeals did not need to consider a number of excuses offered by defendants for their failure to file an answer, where those excuses were not properly raised in the trial court. Rest. Equip. & Supply Depot, Inc. v. Gutierrez, 852 A.2d 951, 2004 D.C. App. LEXIS 366 (2004).

In determining whether trial court had "good cause" to vacate the default entered against defendants for their failure to file an answer, the Court of Appeals would not consider contents of defendants' allegedly meritorious defense; governing rule required a showing of good cause in addition to an answer setting forth a prima facie defense. Rest. Equip. & Supply Depot, Inc. v. Gutierrez, 852 A.2d 951, 2004 D.C. App. LEXIS 366 (2004).

The Court of Appeals reviews a trial court's denial of a motion to show cause for abuse of discretion. Pride Transp., Inc. v. Northeastern Pa. Shippers Coop. Ass'n, 832 A.2d 163, 2003 D.C. App. LEXIS 563 (2003).

Court of Appeals reviews de novo a dismissal for failure to state a claim. Herbin v. Hoeffel, 806 A.2d 186, 2002 D.C. App. LEXIS 503 (2002).

When reviewing a dismissal for failure to state a claim, the Court of Appeals applies the same standard used by the trial court, accepting the facts in the complaint as true, and viewing the complaint in the light most favorable to the plaintiff. Herbin v. Hoeffel, 806 A.2d 186, 2002 D.C. App. LEXIS 503 (2002).

— Presentation and reservation of grounds for review.

In general, an appellate court has discretion, in the interests of justice, to consider an argument that is raised for the first time on appeal if the issue is purely one of law, particularly if the factual record is complete and a remand for further factual development would serve no purpose, the issue has been fully briefed, and no party will be unfairly prejudiced. Orius Telcoms., Inc. v. D.C. Dep't of Empl. Servs., 857 A.2d 1061, 2004 D.C. App. LEXIS 417 (2004).

Considerations of procedural fairness precluded the Court of Appeals from considering the Commission on Mental Health Services' (CMHS) appellate argument that their policies for the involuntary administration of medication to patients was nothing more than a set of guidelines and was not enforceable by patient; CMHS first raised the issue in the Court of Appeals, patient had no notice in the trial court of the argument that CMHS raised on appeal, and the argument bore no significant relation to the issue litigated in the trial court. In re Walker, 856 A.2d 579, 2004 D.C. App. LEXIS 407 (2004).

— Presumptions and burden of proof, scope of review.

On a motion for directed verdict, the record must be viewed in the light most favorable to the non-moving party, and that party is entitled to the benefit of every reasonable inference from the evidence. Zoerb v. Barton Protective Servs., 851 A.2d 465, 2004 D.C. App. LEXIS 305 (2004).

In case involving challenge to a directed verdict, Court of Appeals must review record in light most favorable to the non-moving party, who must be given the benefit of all reasonable inferences to be drawn from the evidence. Warrick v. Walker, 814 A.2d 932, 2003 D.C. App. LEXIS 5 (2003).

Absent a showing otherwise, trial judges are presumed to know and apply the proper legal standards. Harkins v. United States, 810 A.2d 895, 2002 D.C. App. LEXIS 654 (2002).

Appellate court must view the record in the light most favorable to the party that prevailed in the trial court and must sustain any reasonable inference that the trial judge has drawn from the evidence. Harkins v. United States, 810 A.2d 895, 2002 D.C. App. LEXIS 654 (2002).

An appellant must establish that the government presented "no evidence" upon which a reasonable mind could find guilt beyond a reasonable doubt. Phillips v. United States, 778 A.2d 281, 2001 D.C. App. LEXIS 160 (2001).

On appeal from a judgment finding a child to be neglected, the Court of Appeals must view the evidence in the light most favorable to the District and draw every reasonable inference in the District's favor. In re C.C.J, 777 A.2d 265, 2001 D.C. App. LEXIS 146 (2001).

Although the trial court's findings of fact are usually reviewed under the clearly erroneous standard, the Court of Appeals in evaluating the trial court's exercise of discretion inquiries into whether the trial court applied the proper burden of proof; the Court then determines if the trial court's decision was supported by substantial reasoning drawn from a firm factual foundation in the record. In re E.D.R., 772 A.2d 1156, 2001 D.C. App. LEXIS 113 (2001).

Appellate court will review the denial of a motion for a directed verdict in the light most favorable to the prevailing party, and must affirm unless the evidence would permit reasonable persons to return a verdict only in favor

of the moving party. In re Richardson, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

When reviewing a challenge to sufficiency of the evidence, appellate court examines the evidence in the light most favorable to sustaining the verdict. Williams v. United States, 756 A.2d 380, 2000 D.C. App. LEXIS 138 (2000).

In reviewing a denial of a motion for judgment of acquittal, the appellate court must view the evidence in the light most favorable to the government, giving deference to the fact finder's right to weigh the evidence, determine the credibility of the witnesses, and draw inferences from the evidence presented; the appellate court can only reverse a conviction on this ground if there is no evidence upon which a reasonable mind could infer guilt beyond a reasonable doubt. Black v. United States, 755 A.2d 1005, 2000 D.C. App. LEXIS 166 (2000).

Evidence authorized finding that plaintiff had not sustained burden of proof by preponderance of evidence that deceased orally promised to repay sums of money paid to or on behalf of deceased during her life. D.C. Code § 17-305(a). Johns v. Speed, 257 A.2d 497, 1969 D.C. App. LEXIS 334 (App. 1969).

— Probate actions, scope of review.

In considering an order or judgment from the probate division where the case was tried to the bench, the Court of Appeals may review both as to the facts and the law, but the judgment may not be set aside except for errors of law unless it appears that the judgment is plainly wrong or without evidence to support it. In re Orshansky, 952 A.2d 199, 2008 D.C. App. LEXIS 283 (2008).

— Questions for jury, scope of review.

As long as there is some evidence from which jurors could reasonably find the necessary elements, a trial judge must not grant a directed verdict. Schecter v. Merchs. Home Delivery, Inc., 892 A.2d 415, 2006 D.C. App. LEXIS 30 (2006).

In ruling on a motion for judgment as a matter of law, the trial court must take care to avoid weighing the evidence, passing on the credibility of witnesses or substituting its judgment for that of the jury. Schecter v. Merchs. Home Delivery, Inc., 892 A.2d 415, 2006 D.C. App. LEXIS 30 (2006).

Whether one who performs work on behalf of another is an employee or an independent contractor depends on the particular facts of each case. Schecter v. Merchs. Home Delivery, Inc., 892 A.2d 415, 2006 D.C. App. LEXIS 30 (2006).

Issue of whether appliance deliverymen were employees of delivery company or independent contractors was for the jury in customer's action against delivery company, alleging that company was vicariously liable for theft by deliverymen and that company negligently hired deliverymen, where deliverymen signed a contract indicating that they were independent contractors, but the deliverymen were hired in much the same manner as employees, and were trained, monitored, and supervised much the same as employees, and the delivery company exercised substantial control over the manner in which the deliverymen performed their tasks. Schecter v. Merchs. Home Delivery, Inc., 892 A.2d 415, 2006 D.C. App. LEXIS 30 (2006).

Issue of whether delivery company was negligent in hiring deliveryman who had a criminal history involving theft was for the jury in customer's action alleging that negligent hiring caused the loss of her valuables. Schecter v. Merchs. Home Delivery, Inc., 892 A.2d 415, 2006 D.C. App. LEXIS 30 (2006).

— Real property actions generally, scope of review.

Order granting defendants' motion to cancel and release notices of lis pendens was appealable, in investor's fraud and breach of fiduciary duty or contract action seeking damages and constructive trust or equitable lien; deciding lis pendens issue would not involve Court of Appeals in consideration of the merits of the underlying suit, Court of Appeals' decision discussing the conditions necessary to justify a lis pendens may give helpful guidance to the trial court and to parties beyond those involved in instant case, and there was a risk that property would be transferred before litigation affecting an interest in it was concluded. McAteer v. Lauterbach, 908 A.2d 1168, 2006 D.C. App. LEXIS 542 (2006).

Trial court distributed money deposited into court registry in action regarding alleged fraudulent mortgage on marital property to husband and wife as tenants by the entirety without regards to the respective equities of husband and wife, whether either husband or wife actually sought and consented to a partition of the marital property, or whether they jointly agreed to a partition of property held as tenants by the entireties, and thus, remand was necessary to determine such matters prior to distributing money. Arthur v. District of Columbia, 857 A.2d 473, 2004 D.C. App. LEXIS 448 (2004).

Trial court's order denying motion by daughter of deceased tenant for leave to intervene as of right in in rem action by Housing Authority to recover possession of housing unit was appealable to Court of Appeals as a final order. McPherson v. D.C. Hous. Auth., 833 A.2d 991, 2003 D.C. App. LEXIS 619 (2003).

Standard of review by the Court of Appeals with regard to a finding of adverse use of property sufficient to create a prescriptive use is limited by statute to those findings which are clearly erroneous and without evidence to support them. D.C. Code § 17-305(a). Aleotti v.

Whitaker Bros. Business Machines, Inc., 427 A.2d 919, 1981 D.C. App. LEXIS 226 (1981).

Although each party, in action to recover possession of real property, sought to prove that he or she was the sole owner of the property, the record compelled the inference that they intended to share ownership, and the trial court thus was not "clearly erroneous" in inferring that each party intended to receive some vested property interest in return for his or her contribution to the acquisition thereof; however, the record failed to support the trial court's finding that the parties did not intend in effect to establish a resulting trust. D.C. Code SCR, Civil Rule 52(a); D.C. Code § 17-305(a). Edwards v. Woods, 385 A.2d 780, 1978 D.C. App. LEXIS 499 (1978).

— Reception of evidence, scope of review.

Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents. Schecter v. Merchs. Home Delivery, Inc., 892 A.2d 415, 2006 D.C. App. LEXIS 30 (2006).

Evidentiary rulings on relevancy will be overturned only upon a showing of grave abuse of discretion. Jung v. George Washington Univ., 875 A.2d 95, 2005 D.C. App. LEXIS 264 (2005), amended by 883 A.2d 104, 2005 D.C. App. LEXIS 490 (D.C. 2005).

The evaluation and weighing of evidence for relevance and potential prejudice is quintessentially a discretionary function of the trial court, and appellate court owes a great degree of deference to its decision. Jung v. George Washington Univ., 875 A.2d 95, 2005 D.C. App. LEXIS 264 (2005), amended by 883 A.2d 104, 2005 D.C. App. LEXIS 490 (D.C. 2005).

Whether a witness possesses the requisite qualifications to express an opinion on a particular subject is within the trial court's discretion, and its decision in that regard will only be reversed for an abuse of discretion. Jung v. George Washington Univ., 875 A.2d 95, 2005 D.C. App. LEXIS 264 (2005), amended by 883 A.2d 104, 2005 D.C. App. LEXIS 490 (D.C. 2005).

Trial court has broad discretion in determining whether to admit expert testimony, and its ruling admitting or excluding such evidence will not be disturbed unless manifestly erroneous. Jung v. George Washington Univ., 875 A.2d 95, 2005 D.C. App. LEXIS 264 (2005), amended by 883 A.2d 104, 2005 D.C. App. LEXIS 490 (D.C. 2005).

A trial judge's decision on the admission or exclusion of expert testimony will be affirmed unless it is manifestly erroneous. Haidak v. Corso, 841 A.2d 316, 2004 D.C. App. LEXIS 34 (2004).

An evidentiary ruling by a trial judge on the relevancy of a particular item is a highly discretionary decision that will be upset on appeal only upon a showing of grave abuse. M. Pierre Equip. Co. v. Griffith Consumers Co., 831 A.2d 1036, 2003 D.C. App. LEXIS 559 (2003).

If evidentiary issue involves the admission of a new scientific technique or a unique, controversial methodology, appellate court reviews the matter de novo. Cook v. Edgewood Mgmt. Corp., 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

A trial court's ruling on whether certain evidence is relevant or probative is a highly discretionary decision which will be upset on appeal only upon a showing of abuse of discretion. Bruce v. United States, 820 A.2d 540, 2003 D.C. App. LEXIS 151 (2003).

A trial court's decisions about admission or exclusion of evidence are reviewed for abuse of discretion. Plummer v. United States, 813 A.2d 182, 2002 D.C. App. LEXIS 733 (2002).

Implementation of the "rule of completeness," which allows admission of statement's remaining portions after parts of statement are admitted, is committed in the first instance to the discretion of the trial court and is reviewable only for abuse. Mateen Abdus Samad v. United States, 812 A.2d 226, 2002 D.C. App. LEXIS 720 (2002), writ of certiorari denied by 538 U.S. 934, 123 S. Ct. 1600, 155 L. Ed. 2d 333, 2003 U.S. LEXIS 2369, 71 U.S.L.W. 3610 (2003).

The appellate court reviews a trial court's decision to allow opinion testimony under an abuse of discretion standard. Robinson v. United States, 797 A.2d 698, 2002 D.C. App. LEXIS 98 (2002), writ of certiorari denied by 540 U.S. 1212, 124 S. Ct. 1491, 158 L. Ed. 2d 139, 2004 U.S. LEXIS 1541, 72 U.S.L.W. 3538 (2004).

A ruling on the relevance of evidence rests within the sound discretion of the trial court, and will not be disturbed absent a showing of an abuse of discretion. In re Je.A, 793 A.2d 447, 2002 D.C. App. LEXIS 53 (2002).

The decision whether to require expert testimony is within the discretion of the trial court, whose ruling should be sustained unless clearly erroneous. Kakaes v. George Washington Univ., 790 A.2d 581, 2002 D.C. App. LEXIS 22 (2002).

The trial court's decisions about admission or exclusion of evidence are reviewed for abuse of discretion. Burgess v. United States, 786 A.2d 561, 2001 D.C. App. LEXIS 251 (2001), writ of certiorari denied by 537 U.S. 854, 123 S. Ct. 210, 154 L. Ed. 2d 88, 2002 U.S. LEXIS 5668, 71 U.S.L.W. 3238 (2002).

In reviewing the trial court's limitation on cross-examination for abuse of discretion, the Court of Appeals considers whether meaningful cross-examination was precluded by the trial court's rulings. Crutchfield v. United States, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

Issue of whether evidentiary hearing was necessary to determine admissibility of evidence, or whether trial court could properly consider this issue by means of proffer, was reviewable for abuse of discretion. Crutchfield v. United States, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

Fact that "other crimes" evidence in form of testimony that defendant had set fires before in his father's house was elicited on cross-examination by defense counsel did not preclude defendant from arguing that such testimony should be basis for reversal of his conviction for felony malicious destruction of property, alleging that defendant again set that house on fire; initial question that elicited response was designed to delve into witness's possible bias, it required simple yes or no response and did not invite inflammatory remark given, and even though defense counsel repeated witness's statement when questioning resumed, counsel had right to attempt to rehabilitate defendant by showing witness's bias, in light of trial court's ruling that it would not give instruction or declare mistrial at that time. Crutchfield v. United States, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

When reviewing the denial of a defendant's motion for mistrial, the court looks to several factors, including the gravity of the misconduct, the relative strength of the government's case, the centrality of the issue affected, and any mitigating actions taken by the court, all the while giving due deference to the decision of the trial judge, who had the advantage of being present not only when the alleged misconduct occurred, but throughout the trial. Crutchfield v. United States, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

Appellate court would review trial court's ruling allowing admission, in armed robbery trial, of defendant's attempted flight from preliminary hearing under abuse of discretion standard. Smith v. United States, 777 A.2d 801, 2001 D.C. App. LEXIS 156 (2001).

In determining whether there is sufficient evidence to support a jury verdict, the appellate court should: (1) consider the evidence most favorable to the prevailing party; (2) assume that all conflicts in the evidence were resolved by the jury in favor of the prevailing party; (3) assume as proved all facts which the prevailing party's evidence tends to prove; and (4) give to the prevailing party the benefit of all favorable inferences which reasonably may be drawn from the facts proved. Drevenak v. Abendschein, 773 A.2d 396, 2001 D.C. App. LEXIS 118 (2001).

In medical malpractice action, any error was harmless with respect to admission of expert testimony that patient's theory of causation was anatomically impossible, where jury also found that surgeon had not breached the standard of care, which was an issue not addressed by that expert. Wagner v. Georgetown Univ. Med. Ctr., 768 A.2d 546, 2001 D.C. App. LEXIS 55 (2001).

Erroneous admission of a street level drug dealer's hearsay statements indicating that a debt was the defendant's motive for killing a fellow dealer was not harmless in a prosecution for first-degree murder and possession of a firearm during a crime of violence; no direct evidence indicated that the defendant murdered the victim. Doret v. United States, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

Decision whether to admit evidence is within sound discretion of trial court, and this decision will not be disturbed absent a showing of abuse. McCoy v. United States, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

No distinction is drawn between direct and circumstantial evidence when the Court of Appeals reviews a denial of a motion for judgment of acquittal. Johnson v. United States, 756 A.2d 458, 2000 D.C. App. LEXIS 177 (2000).

Trial court's factual findings that, after detective advised defendant of his Miranda rights and defendant invoked right to counsel, defendant voluntarily initiated discussion with detective and that detective did not question defendant about offense with which defendant was charged could not be disturbed unless they were plainly wrong or without support in the evidence. U.S. Const.Amends. 5, 6; D.C. Code 1981, § 17-305(a). Gilmore v. United States, 742 A.2d 862, 1999 D.C. App. LEXIS 263 (1999).

Findings of fact underlying ruling on motion to suppress are reviewed under clearly erroneous standard, and reviewing court must accept inferences drawn by trial court as to facts before it so long as such inferences are supportable under any reasonable view of the evidence. D.C. Code 1981, § 17-305(a). Griffin v. United States, 618 A.2d 114, 1992 D.C. App. LEXIS 322 (1992).

In reviewing trial court's findings in a motion to suppress, the Court of Appeals must accept its resolution of conflicting testimony and will not disturb factual findings so long as they are supported by substantial evidence. D.C. Code

§ 17-305(a). United States v. Alexander, 428 A.2d 42, 1981 D.C. App. LEXIS 227 (1981).

Whether trial judge's decision has substantial support in the evidence is the standard for reviewing a trial court's ruling on motion to suppress inculpatory statements, rather than the abuse of discretion standard. U.S. Const. Amends. 5, 6; D.C. Code § 17-305(a). In re P., 411 A.2d 643, 1980 D.C. App. LEXIS 240 (1980), vacated by 449 U.S. 945, 101 S. Ct. 345, 66 L. Ed. 2d 210, 1980 U.S. LEXIS 3678, 49 U.S.L.W. 3331 (1980).

On appeal, it was not function of District of Columbia Court of Appeals to determine how it would have ruled on motion to suppress juvenile's inculpatory statement had it been the trial judge; reviewing court's sole function was to determine whether trial court committed reversible error in denying the motion. U.S. Const. Amends. 5, 6; D.C. Code § 17-305(a). In re P., 411 A.2d 643, 1980 D.C. App. LEXIS 240 (1980), vacated by 449 U.S. 945, 101 S. Ct. 345, 66 L. Ed. 2d 210, 1980 U.S. LEXIS 3678, 49 U.S.L.W. 3331 (1980).

Trial court's ultimate fact-finding of voluntariness of an inculpatory statement is not to be overturned unless it is without substantial support in the evidence. U.S. Const. Amends. 5, 6; D.C. Code § 17-305(a). In re P., 411 A.2d 643, 1980 D.C. App. LEXIS 240 (1980), vacated by 449 U.S. 945, 101 S. Ct. 345, 66 L. Ed. 2d 210, 1980 U.S. LEXIS 3678, 49 U.S.L.W. 3331 (1980).

In reviewing trial court's ruling on admissibility of declarations against penal interest, Court of Appeals will not disturb trial court's findings unless they are clearly erroneous. D.C. Code § 17-305(a). Laumer v. United States, 409 A.2d 190, 1979 D.C. App. LEXIS 511 (1979).

Factual determinations made by trial court in reaching its decision to deny motion to suppress evidence were not to be disturbed unless they were clearly erroneous. D.C. Code § 17-305. Brooks v. United States, 367 A.2d 1297, 1976 D.C. App. LEXIS 422 (1976).

Judgment as to credibility of two witnesses, who were questioned by trial judge in connection with defendant's allegations that government witnesses had been discussing second-degree murder trial with spectator, was that of trial court. D.C. Code §§ 17-305, 22-2403. Parker v. United States, 363 A.2d 975, 1976 D.C. App. LEXIS 377 (1976).

— Sanity determinations, scope of review.

Trial judge's decision whether to conduct a Frendak inquiry into whether a defendant voluntarily and intelligently waived an insanity defense is reviewed for abuse of discretion. Patton v. United States, 782 A.2d 305, 2001 D.C. App. LEXIS 213 (2001).

A trial court's judgment concerning the conditional release of a patient previously acquitted of a criminal offense by reason of insanity must survive scrutiny by the Court of Appeals unless it is plainly wrong or without evidence to support it. D.C. Code 1981, §§ 17-305(a), 24-301(e). De Veau v. United States, 483 A.2d 307, 1984 D.C. App. LEXIS 516 (1984).

— Searches and seizures, scope of review.

Question of whether police had reasonable, articulable suspicion sufficient to justify investigatory stop is one of law which Court of Appeals reviews de novo, giving due deference to trial court's findings of fact. Black v. United States, 810 A.2d 410, 2002 D.C. App. LEXIS 664 (2002).

Whether a seizure has occurred for Fourth Amendment purposes is a question of law which appellate court reviews de novo, deferring to the trial court's factual findings, unless clearly erroneous. Jackson v. United States, 805 A.2d 979, 2002 D.C. App. LEXIS 502 (2002).

Whether a citizen has voluntarily consented to a search involves a separate inquiry from inquiry into whether a seizure has occurred for Fourth Amendment purposes, as to which an appellate court is bound to the finding of the trial court unless the finding is clearly erroneous. Jackson v. United States, 805 A.2d 979, 2002 D.C. App. LEXIS 502 (2002).

Although Court of Appeals defers to relevant factual findings made by the trial court on motion to suppress, Court of Appeals reviews de novo the ultimate question of whether a seizure was supported by reasonable suspicion. McFerguson v. United States, 770 A.2d 66, 2001 D.C. App. LEXIS 59 (2001), remanded sub nomine Worthington v. United States, 805 A.2d 929, 2002 D.C. App. LEXIS 496 (D.C. 2002).

Court of Appeals decides de novo whether there was probable cause to justify a search. McFerguson v. United States, 770 A.2d 66, 2001 D.C. App. LEXIS 59 (2001), remanded sub nomine Worthington v. United States, 805 A.2d 929, 2002 D.C. App. LEXIS 496 (D.C. 2002).

When reviewing determination that Terry stop was justified, the Court of Appeals gives due deference to the trial court's finding of fact, reviews its legal conclusions de novo, and must ensure that it had a substantial basis for concluding that no constitutional violation occurred. Reyes v. United States, 758 A.2d 35, 2000 D.C. App. LEXIS 200 (2000), writ of certiorari denied by 534 U.S. 917, 122 S. Ct. 265, 151 L. Ed. 2d 193, 2001 U.S. LEXIS 6962, 70 U.S.L.W. 3242 (2001).

Finding that defendant abandoned small metallic key case containing heroin and cocaine when police on scooters approached crowd, and that therefore defendant lacked standing to challenge seizure or search of key case, was not clearly erroneous; defendant discarded key case on public sidewalk, exposing it to public view.

U.S. Const.Amend. 4; D.C. Code 1981, § 17-305(a). Spriggs v. United States, 618 A.2d 701, 1992 D.C. App. LEXIS 349 (1992).

Appellate court could not resolve issue of lawfulness of strip and body cavity search and remand was required, where motion court refused to consider defendant's evidence of forcible body cavity search and declined to permit defense counsel to cross-examine police officer regarding extent of search at police station. D.C. Code 1981, § 17-305(a). Washington v. United States, 594 A.2d 1050, 1991 D.C. App. LEXIS 210 (1991).

Evidence that, at the time defendant's wife consented to a search of her automobile and her home, she was a 32-year-old woman with a high school education, was not in custody and had been advised of her right to refuse to consent to the searches, was accompanied by a friend to the police station, and that she was not threatened or coerced into giving consent and, after orally agreeing to the search, affirmed consent in writing, was sufficient to support finding that consent was intelligently and voluntarily given. U.S. Const.Amend. 4; D.C. Code 1981, § 17-305(a). Welch v. United States, 466 A.2d 829, 1983 D.C. App. LEXIS 484 (1983).

Evidence presented at suppression hearing on the issue of the common authority of defendant's wife over their home and automobile was sufficient to support trial court's finding that defendant's wife had sufficient authority over the home and automobile to authorize searches of them. U.S. Const.Amend. 4; D.C. Code 1981, § 17-305(a). Welch v. United States, 466 A.2d 829, 1983 D.C. App. LEXIS 484 (1983).

Trial court was plainly wrong in finding that Government had not carried its burden to affirmatively prove that arrestee's second statement and all subsequently obtained evidence, upon which Government proposed to prosecute police officer for assaulting arrestee and obstruction of justice, were derived from legitimate source wholly independent of officer's compelled immunized testimony given during administrative police investigation, and thus error occurred in suppressing such evidence. D.C. Code 1973, §§ 17-305(a), 22-504, 22-703; U.S. Const.Amend. 5. United States v. Anderson, 450 A.2d 446, 1982 D.C. App. LEXIS 427 (1982).

Trial court's order granting application for search warrant in order that three objects, believed to be bullets shot at defendant during armed robbery, be removed from defendant's body was proper under search warrant statute since statute was broad enough to encompass the order. D.C. Code §§ 17-305(a), 23-521. Hughes v. United States, 429 A.2d 1339, 1981 D.C. App. LEXIS 260 (1981).

In prosecution for carrying pistol without license, possession of unregistered firearm, and possession of ammunition for unregistered firearm, trial court's ruling denying defendant's motion to suppress pistol and ammunition was neither plainly wrong nor without evidence to support it, where there was no meaningful evidence in record that stop of defendant's car for traffic violation was sham, i.e., that it provided pretext to search car, but, rather, there was ample evidence to contrary. D.C. Code § 17-305(a). Timus v. United States, 406 A.2d 1269, 1979 D.C. App. LEXIS 450 (1979).

Evidence supported trial court's finding that there was no credible evidence to reflect that search warrant was used as a ruse for a general search, even though local vice squad police officers accompanied federal agents. D.C. Code § 17-305(a); U.S. Const. Amends. 4, 5. In re G., 399 A.2d 65, 1979 D.C. App. LEXIS 308 (1979).

In prosecution for carrying pistol without license, evidence supported finding that the pistol had been in plain view on floor of car driven by defendant. D.C. Code §§ 17-305, 22-3204. Little v. United States, 393 A.2d 94, 1978 D.C. App. LEXIS 336 (1978).

Evidence consisting of defendant either exiting or entering buildings with rolled newspapers which were subsequently found, pursuant to search of automobile's front seat based on search warrant, to contain envelopes with numbers betting slips inside was insufficient to establish use of the automobile in a lottery or gambling operation for purpose of libel action, under statute, seeking forfeiture of the automobile. D.C. Code §§ 17-305(a), 22-1501, 22-1505(c). Vasile v. District of Columbia, 296 A.2d 443, 1972 D.C. App. LEXIS 275 (1972).

— Secured transactions, scope of review.

In action in which creditor, which repossessed collateral, a used automobile, and resold it without giving notice to debtor prescribed by Uniform Commercial Code, sought deficiency judgment against defaulting debtor, neither principles of waiver nor estoppel precluded debtor from asserting lack of notice, since, if trial court considered and rejected waiver and estoppel issues, its conclusions were supported by evidence, and since, if, to contrary, such issues were not raised and considered at trial, there was no perceived injustice in refusing, on appeal, to honor creditor's arguments concerning such issues. D.C. Code §§ 17-305(a), 28:9-501(3), 28:9-504(3), 40-901 et seq., 40-902(f); D.C. Code SCR, Civil Rule 52. Gavin v. Washington Post Employees Federal Credit Union, 397 A.2d 968, 1979 D.C. App. LEXIS 274 (1979).

— Sentence and punishment, scope of review.

Defendant's claim that court-imposed requirement that defendant be admitted to drug-treatment facility in order to have part of sentence suspended did not conflict with au-

thority of Parole Commission to release defendant before end of sentence, and thus claim was not ripe for appeal. Olden v. United States, 781 A.2d 740, 2001 D.C. App. LEXIS 210 (2001).

So long as the sentence imposed is within statutory limits, the Court of Appeals will not disturb it unless it has a "fundamental defect." Yemson v. United States, 764 A.2d 816, 2001 D.C. App. LEXIS 3 (2001).

Issue as to whether sentencing court impermissibly considered defendant's national origin and his status as an illegal alien when imposing an enhanced sentence on his guilty pleas to credit card fraud, receiving stolen property, and one count of failure to appear in court would be reviewed for plain error, where defendant made assertion for first time on appeal and said nothing about such issue before the trial court. Yemson v. United States, 764 A.2d 816, 2001 D.C. App. LEXIS 3 (2001).

Whether information upon which trial judge makes determination of defendant's eligibility under statutory addict exception to mandatory minimum sentence for manufacturing, distributing, or possessing with intent to manufacture or distribute a controlled substance is "reliable" is factual determination which Court of Appeals cannot disturb unless plainly wrong or without evidence to support it. D.C. Code 1981, §§ 17-305(a), 33-541(c)(2). Mozelle v. United States, 612 A.2d 221, 1992 D.C. App. LEXIS 220 (1992).

Sentencing court's determination of whether defendant is entitled to "addict exception" from mandatory minimum sentence under Controlled Substance Act will not be disturbed unless underlying factual findings are plainly wrong or unsupported by evidence. D.C. Code 1981, §§ 17-305(a), 33-541(c)(2). Stroman v. United States, 606 A.2d 767, 1992 D.C. App. LEXIS 99 (1992).

— Speedy trial, scope of review.

Under Barker, a delay of more than one year between the indictment and trial creates a prima facie, rebuttable presumption that the speedy trial right has been denied. United States v. Stephenson, 891 A.2d 1076, 2006 D.C. App. LEXIS 31 (2006).

Task of analyzing a claim to a speedy trial falls in first instance to the trial court and then in second instance to the Court of Appeals, which may reverse for errors of law, but which is otherwise bound by findings of trial court unless they are plainly wrong or without evidence to support them. D.C. Code 1981, § 17-305(a); U.S. Const.Amend. 6. Graves v. United States, 490 A.2d 1086, 1984 D.C. App. LEXIS 586 (1984), writ of certiorari denied by 474 U.S. 1064, 106 S. Ct. 814, 88 L. Ed. 2d 788, 1986 U.S. LEXIS 2427, 54 U.S.L.W. 3461 (1986).

Loss of opportunity to be considered for youthful offender treatment is prejudice of sort germane to speedy trial analysis, but where it was unlikely that court under best of circumstances could have acted expeditiously enough to save Youthful Corrections Act eligibility, and there was no evidence that defendant called such problem to court's attention, trial court's finding of prejudice, from appellate delay, because of possible ineligibility under Youth Corrections Act was "plainly wrong." D.C. Code §§ 17-305(a), 23-1321, 24-204; 18 U.S.C. §§ 5005 et seq., 5006(d), 5010; U.S. Const. Amend. 5. United States v. Alston, 412 A.2d 351, 1980 D.C. App. LEXIS 231 (1980).

Evidence in armed robbery prosecution supported trial court's findings that 17 months of the passage of over 21 months between arrest and trial was due to court congestion, that while defendant did assert his rights to speedy trial he did not assert his rights forcefully, that he was free on bail and that defendant's right to speedy trial was thus not violated by the delay. D.C. Code § 17-305(a). Reid v. United States, 402 A.2d 835, 1979 D.C. App. LEXIS 386 (1979).

On review of trial court's decision regarding a speedy trial claim after verdict, role of appeals court is to determine whether trial court erred in balancing process mandated by Supreme Court and, accordingly, review is limited to assessing evidentiary support for facts that have been determined respecting factors, which Supreme Court has mandated to be balanced. D.C. Code § 17-305(a). Reid v. United States, 402 A.2d 835, 1979 D.C. App. LEXIS 386 (1979).

— Statutory construction, scope of review.

An appellate court's first step when interpreting a statute is to look at the language of the statute. Jeffrey v. United States, 892 A.2d 1122, 2006 D.C. App. LEXIS 78 (2006).

An appellate court is required to give effect to a statute's plain meaning if the words are clear and unambiguous. Jeffrey v. United States, 892 A.2d 1122, 2006 D.C. App. LEXIS 78 (2006).

Primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. Jeffrey v. United States, 892 A.2d 1122, 2006 D.C. App. LEXIS 78 (2006).

In examining statutory language, it is axiomatic that the words of the statute should be construed according to their ordinary sense and with the meaning commonly attributed to them. Jeffrey v. United States, 892 A.2d 1122, 2006 D.C. App. LEXIS 78 (2006).

Literal words of a statute are not the sole index to legislative intent, but rather, are to be read in the light of the statute taken as a whole, and are to be given a sensible construction and one that would not work an obvious injustice. Jeffrey v. United States, 892 A.2d 1122, 2006 D.C. App. LEXIS 78 (2006).

In construing a statute, an appellate court must be mindful that its interpretation is not at variance with the policy of the legislation as a whole, requiring the court to remain more faithful to the purpose than the word. Jeffrey v. United States, 892 A.2d 1122, 2006 D.C. App. LEXIS 78 (2006).

An appellate court consults legislative history of a statute to ensure that its interpretation is not at variance with the policy of the legislation as a whole. Jeffrey v. United States, 892 A.2d 1122, 2006 D.C. App. LEXIS 78 (2006).

Matter of statutory interpretation is reviewed de novo. District of Columbia v. D.C. Office of Emple. Appeals, 883 A.2d 124, 2005 D.C. App. LEXIS 486 (2005).

The trial court's construction of statutes is reviewed de novo. In re K.A., 879 A.2d 1, 2005 D.C. App. LEXIS 261 (2005).

A question of statutory construction is an issue of law subject to de novo review. Richardson v. Easterling, 878 A.2d 1212, 2005 D.C. App. LEXIS 379 (2005).

In interpreting statutes, the Court of Appeals consults the legislative history of a statute in appropriate cases. Mesa v. United States, 875 A.2d 79, 2005 D.C. App. LEXIS 256 (2005).

Court of Appeals reviews de novo issues of statutory interpretation. McNeely v. United States, 874 A.2d 371, 2005 D.C. App. LEXIS 254 (2005).

The Court of Appeals defers to an administrative agency's interpretation of a statute it administers if it is reasonable and not plainly wrong or inconsistent with its legislative purpose. Majerle Mgmt. v. D.C. Rental Hous. Comm'n, 866 A.2d 41, 2004 D.C. App. LEXIS 698 (2004).

In construing statute, Court of Appeals cannot read into statute provision that is not there. Wright v. Thomas D. Walsh, Inc., 856 A.2d 1108, 2004 D.C. App. LEXIS 414 (2004).

In construing statute, reviewing court must first look at language of statute by itself to see if language is plain and admits of no more than one meaning; when plain meaning of statutory language is unambiguous, intent of legislature is clear, and judicial inquiry need go no further. Wright v. Thomas D. Walsh, Inc., 856 A.2d 1108, 2004 D.C. App. LEXIS 414 (2004).

Court of Appeals reviews questions of statutory interpretation de novo. Wright v. Thomas D. Walsh, Inc., 856 A.2d 1108, 2004 D.C. App. LEXIS 414 (2004).

Appellate court may affirm a judgment that was erroneous at the time, where the law has been changed in the meantime and where such application of the new law will impair no vested rights under the prior law. In re Te.L., 844 A.2d 333, 2004 D.C. App. LEXIS 51 (2004).

Appellate court must apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary. In re Te.L., 844 A.2d 333, 2004 D.C. App. LEXIS 51 (2004).

Issues of statutory construction are subject to de novo review. Feaster v. Vance, 832 A.2d 1277, 2003 D.C. App. LEXIS 566 (2003).

Court of Appeals reviews a matter of statutory interpretation de novo. In re Estate of Greene, 829 A.2d 506, 2003 D.C. App. LEXIS 486 (2003).

Issues of statutory interpretation are reviewed de novo. In re Estate of Greene, 829 A.2d 506, 2003 D.C. App. LEXIS 486 (2003).

Appellate review of a trial court's interpretation of a statute is de novo. In re Estate of Greene, 829 A.2d 506, 2003 D.C. App. LEXIS 486 (2003).

The judiciary is the final authority on issues of statutory construction. Belcon Inc. v. D.C. Water & Sewer Auth., 826 A.2d 380, 2003 D.C. App. LEXIS 413 (2003).

Interpretation of a statute is reviewed de novo. Cook v. Edgewood Mgmt. Corp., 825 A.2d 939, 2003 D.C. App. LEXIS 415 (2003).

The Court of Appeals reviews de novo the trial court's construction of the District of Columbia (D.C.) Code. Carter v. State Farm Mut. Auto. Ins. Co., 808 A.2d 466, 2002 D.C. App. LEXIS 545 (2002).

As general rule, Court of Appeals owes deference to agency's interpretation of statute under which it acts; however, Court will not defer to agency's interpretation if it is inconsistent with plain language of statute itself. D.C. Metro. Police Dep't v. Pinkard, 801 A.2d 86, 2002 D.C. App. LEXIS 319 (2002).

The Court of Appeals gives deference to an agency's interpretation of its governing statute so long as that interpretation is reasonable and consistent with the statutory language. Union Light & Power Co. v. D.C. Dep't of Empl. Servs., 796 A.2d 665, 2002 D.C. App. LEXIS 85 (2002).

The construction of a statute raises a question of law which Court of Appeals reviews de novo. Leonard v. District of Columbia, 794 A.2d 618, 2002 D.C. App. LEXIS 73 (2002).

Compliance with terms of statute mandating that a person file notice with District of Columbia prior to filing suit against the District is a question of law that is reviewed de novo. Hubbard v. Chidel, 790 A.2d 558, 2002 D.C. App. LEXIS 23 (2002), remanded by 840 A.2d 689, 2004 D.C. App. LEXIS 3 (D.C. 2004).

Court of Appeals is the final authority on issues of statutory construction. Genstar Stone Prods. Co. v. Dep't of Empl. Servs., 777 A.2d 270, 2001 D.C. App. LEXIS 150 (2001).

Court owes a level of deference to Office of Tax Revenue's (OTR) interpretation of its governing statute; nonetheless, that interpretation only should be followed when it is reasonable and does not contravene the language or legislative history of the statute. School St. Assocs.

v. District of Columbia, 764 A.2d 798, 2001 D.C. App. LEXIS 4 (2001).

Court's deference to the agency's interpretation of statute goes only so far as it is consistent with the legislative intent. School St. Assocs. v. District of Columbia, 764 A.2d 798, 2001 D.C. App. LEXIS 4 (2001).

Interpretation of statute on evidence of an identification made after perceiving a person is a legal question reviewed de novo. Sparks v. United States, 755 A.2d 394, 2000 D.C. App. LEXIS 109 (2000).

— Stipulations, scope of review.

Where evidence consists entirely of stipulated testimony, joint exhibits and other undisputed facts, the District of Columbia Court of Appeals looks to whether the stipulated evidence and inferences fairly drawn therefrom support the conclusions of law. D.C. Code 1981, § 17-305(a). Riggs v. Aetna Ins. Co., 454 A.2d 818, 1983 D.C. App. LEXIS 283 (1983).

— Sufficiency of evidence, scope of review.

Sufficient evidence supported conviction for attempted possession of a prohibited weapon, i.e., a belt; father hit child with belt in such a way that not only left visible redness on child's face, including a red patch directly under his right eye, but also in such a manner that was likely to produce great bodily injury, there was a substantial risk of protracted loss or impairment of the function of child's eye, and even after father hit child in his eye, he pursued child upstairs and continued to use belt to beat child, leaving other marks on child's face and body. Dorsey v. United States, 902 A.2d 107, 2006 D.C. App. LEXIS 358 (2006).

An appellate court reviews a claim of insufficiency of evidence in the light most favorable to the government, recognizing the province of the trier of fact to weigh the evidence, determine the credibility of the witnesses and to draw reasonable inferences from the testimony. Jeffrey v. United States, 892 A.2d 1122, 2006 D.C. App. LEXIS 78 (2006).

When reviewing the sufficiency of the evidence, the Court of Appeals must view all the evidence in the light most favorable to the government, keeping in mind the jury's right to assess credibility and to draw reasonable inferences from the evidence it has heard. Jeffrey v. United States, 892 A.2d 1122, 2006 D.C. App. LEXIS 78 (2006).

It is only where there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt that a trial court may properly take the case from a jury. Jeffrey v. United States, 892 A.2d 1122, 2006 D.C. App. LEXIS 78 (2006).

If there is not sufficient evidence for a reasonable juror to find in the non-moving party's favor, then the trial court is obliged, as a matter of law, to direct a verdict for the moving party. Jeffrey v. United States, 892 A.2d 1122, 2006 D.C. App. LEXIS 78 (2006).

Deposition testimony of parents' expert in security did not establish, in wrongful death and survival action brought against university by parents of student who was murdered in his on-campus dormitory room by another student who had engaged in five-year crime spree, including a prior unsolved murder on campus, a standard of care requiring a university to collect, without request or subpoena from police or prosecutors, incident reports relating to nonviolent crimes involving a student who had not been identified as a potential suspect; expert merely cited a general duty that a university would have to protect its students from harm from others. Varner v. District of Columbia, 891 A.2d 260, 2006 D.C. App. LEXIS 27 (2006).

Conclusory assertion, in summary judgment affidavit of parents' expert witness on appropriateness and sufficiency of academic discipline, that university's decision to permit student to live in on-campus dormitory after student had been suspended for one year for thefts was "below the standard of care," did not establish standard of care, in wrongful death and survival action brought by parents of another student who was murdered in his on-campus dormitory room by previously-suspended student. Varner v. District of Columbia, 891 A.2d 260, 2006 D.C. App. LEXIS 27 (2006).

Deposition testimony and summary judgment affidavit of parents' expert witness on appropriateness and sufficiency of academic discipline did not satisfy requirement of clearly articulating and referencing a standard of care by which university's actions could be measured, in wrongful death and survival action brought by parents of university student who was murdered in his on-campus dormitory room by another student, in which action parents alleged that university was negligent in insufficiently disciplining student-murderer for misconduct before he murdered their son; expert merely expressed his own personal opinion, without suggesting any recognized standard, written or oral, that addressed question whether university's pre-murder imposition of one-year suspension on student-murderer, rather than expelling him, was unreasonable with respect to student-murderer's pre-murder misconduct. Varner v. District of Columbia, 891 A.2d 260, 2006 D.C. App. LEXIS 27 (2006).

Physician's expert opinion was sufficient to establish evidence both of national standard of care and breach of that standard in patient's medical malpractice action alleging negligent angioplasty procedure; he explained that during his 40 years of practice as board-certified general surgeon he had encountered patients who experienced internal bleeding from stab wounds or other accidents which required him

to diagnose and treat bleeding, and he testified that his knowledge of national standard of care was based on experience, education, hospital staff meetings, surgical society meetings, and medical journals with regard to national standard on treating and managing these bleeding complications. Snyder v. George Washington Univ., 890 A.2d 237, 2006 D.C. App. LEXIS 5 (2006).

On appeal, Court of Appeals would examine the agency record to determine whether there was substantial evidence to support Office of Employee Appeals' (OEA) findings of fact, or whether OEA's action was arbitrary, capricious, or an abuse of discretion. Bagenstose v. D.C. Office of Emple. Appeals, 888 A.2d 1155, 2005 D.C. App. LEXIS 639 (2005).

When a case is tried without a jury, the Court of Appeals, in reviewing the sufficiency of the evidence to support a conviction, may not disturb the trial court's findings unless it appears that the judgment is plainly wrong or without evidence to support it. Olafisoye v. United States, 857 A.2d 1078, 2004 D.C. App. LEXIS 446 (2004).

Where the court grants a new trial because the verdict is against the clear weight of the evidence, the Court of Appeals will scrutinize to assure that the trial court did not simply accept one version of the facts over another. Faggins v. Fischer, 853 A.2d 132, 2004 D.C. App. LEXIS 293 (2004).

Whether the evidence was sufficient to go to the jury is a question of law, which appellate court considers de novo. Zoerb v. Barton Protective Servs., 851 A.2d 465, 2004 D.C. App. LEXIS 305 (2004).

In a bench trial, the Court of Appeals will not reverse a conviction for insufficient evidence unless the defendant establishes that the trial court's factual findings were plainly wrong or without evidence to support them. Cannon v. United States, 838 A.2d 293, 2003 D.C. App. LEXIS 712 (2003).

On appeal, the Court of Appeals views the evidence in the light most favorable to the government, drawing no distinction between direct and circumstantial evidence. In re CA.S., 828 A.2d 184, 2003 D.C. App. LEXIS 431 (2003).

When assessing claims of evidentiary insufficiency, appellate court must view all the evidence in the light most favorable to the government, keeping in mind the jury's right to assess credibility and to draw reasonable inferences from the evidence it has heard. Butts v. United States, 822 A.2d 407, 2003 D.C. App. LEXIS 227 (2003).

In reviewing a denial of a motion for judgment of acquittal, the evidence need not compel a finding of guilt beyond a reasonable doubt to survive motion; rather the evidence must merely be sufficient to allow a finding of guilt beyond a reasonable doubt by a reasonable fact finder, drawing no distinction between direct and circumstantial evidence. Guzman v. United States, 821 A.2d 895, 2003 D.C. App. LEXIS 221 (2003).

A motion for judgment of acquittal should not be granted where the evidence is such that a reasonable mind might or might not have a reasonable doubt as to the guilt of the defendant. Guzman v. United States, 821 A.2d 895, 2003 D.C. App. LEXIS 221 (2003).

In considering an insufficiency claim, appellate court views the evidence in the light most favorable to the government, recognizing the jury's right as fact-finder to weigh the evidence, to determine the credibility of witnesses, and to draw justifiable inferences from the evidence. Johnson v. United States, 820 A.2d 551, 2003 D.C. App. LEXIS 153 (2003), writ of certiorari denied by 541 U.S. 980, 124 S. Ct. 1895, 158 L. Ed. 2d 481, 2004 U.S. LEXIS 2684, 72 U.S.L.W. 3633 (2004).

Reversal for insufficiency of evidence is warranted only if there is no evidence whatever upon which a reasonable trier of fact might fairly find guilt beyond a reasonable doubt. Johnson v. United States, 820 A.2d 551, 2003 D.C. App. LEXIS 153 (2003), writ of certiorari denied by 541 U.S. 980, 124 S. Ct. 1895, 158 L. Ed. 2d 481, 2004 U.S. LEXIS 2684, 72 U.S.L.W. 3633 (2004).

In considering the sufficiency of the evidence, the Court of Appeals views the evidence in the light most favorable to the government, recognizing the province of the trier of fact to weigh the evidence, determine the credibility of the witnesses, and draw reasonable inferences from the testimony. Agnew v. United States, 813 A.2d 192, 2002 D.C. App. LEXIS 737 (2002).

Evidence is deemed insufficient only if the Court of Appeals concludes, as a matter of law, that no impartial factfinder could rationally find guilt beyond a reasonable doubt on the evidence presented. Agnew v. United States, 813 A.2d 192, 2002 D.C. App. LEXIS 737 (2002).

To reverse, the Court of Appeals must be able to conclude that the evidence, when viewed in favor of the government, is such that a reasonable juror must have a reasonable doubt as to the existence of any of the essential elements of the crime. Agnew v. United States, 813 A.2d 192, 2002 D.C. App. LEXIS 737 (2002).

In weighing a claim of evidentiary insufficiency, appellate court must view the evidence in the light most favorable to the government, draw all reasonable inferences from that evidence, and defer to the jury the right to weigh the credibility of witnesses. Persall v. United States, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

On a challenge to sufficiency of evidence to support conviction, appellate court reviews evidence in the light most favorable to the government, giving full play to the right of the fact finder to determine credibility, weigh the evidence, and draw justifiable inferences of fact, and making no distinction between direct and circumstantial evidence. Persall v. United States, 812 A.2d 953, 2002 D.C. App. LEXIS 746 (2002), remanded by 859 A.2d 634, 2004 D.C. App. LEXIS 458 (D.C. 2004).

In determining the sufficiency of the evidence, the appellate court applies the same standards as the trial court; the court views the evidence in the light most favorable to the government, recognizing the province of the trier of fact to weigh the evidence, determine the credibility of the witness and to draw reasonable inference from the testimony. Harper v. United States, 811 A.2d 808, 2002 D.C. App. LEXIS 673 (2002).

When reviewing a sufficiency-of-the-evidence claim, the Court of Appeals applies the same standard as the trial court. Harkins v. United States, 810 A.2d 895, 2002 D.C. App. LEXIS 654 (2002).

The Court of Appeals views the evidence in the light most favorable to the government, recognizing the province of the trier of fact to weigh the evidence, determine the credibility of the witnesses, and to draw reasonable inferences from the testimony. Harkins v. United States, 810 A.2d 895, 2002 D.C. App. LEXIS 654 (2002).

Court of Appeals may not reverse trial court's findings of civil protection order violation unless they are without evidentiary support or plainly wrong. Ba v. United States, 809 A.2d 1178, 2002 D.C. App. LEXIS 600 (2002).

The appellate court reviews claims of insufficiency of the evidence de novo, applying the same standard as the trial court. Robinson v. United States, 797 A.2d 698, 2002 D.C. App. LEXIS 98 (2002), writ of certiorari denied by 540 U.S. 1212, 124 S. Ct. 1491, 158 L. Ed. 2d 139, 2004 U.S. LEXIS 1541, 72 U.S.L.W. 3538 (2004).

When reviewing a challenge regarding the sufficiency of evidence of claims alleging gross negligence of the operator of a police car on an emergency run, the appropriate inquiry is whether, given the balance of factors, a reasonable juror could conclude that the conduct of the operator so grossly deviated from the conduct required under the circumstances as to support a finding of wanton, willful, and reckless disregard or conscious indifference for the rights and safety of others. Duggan v. District of Columbia, 783 A.2d 563, 2001 D.C. App. LEXIS 220 (2001), vacated by 797 A.2d 1233, 2002 D.C. App. LEXIS 103 (D.C. 2002), superseded by, remanded by 884 A.2d 661, 2005 D.C. App. LEXIS 516 (D.C. 2005).

When considering claims of evidentiary insufficiency in a criminal case, the appellate court views the evidence in the light most favorable to the government. Nowlin v. United States, 782 A.2d 288, 2001 D.C. App. LEXIS 208 (2001).

In reviewing sufficiency of the evidence claims, Court of Appeals views the evidence and draws all reasonable inferences in the light most favorable to the government. McCoy v. United States, 781 A.2d 765, 2001 D.C. App. LEXIS 211 (2001).

When reviewing claims of insufficient evidence, the appellate court views the evidence in the light most favorable to the government, affording the trier of fact great deference in weighing the evidence, assessing witness credibility, and drawing reasonable inferences. Phillips v. United States, 778 A.2d 281, 2001 D.C. App. LEXIS 160 (2001).

In evaluating a claim of evidentiary insufficiency, the appellate court must view the evidence in a light most favorable to the government, recognizing the jury's province to weigh the evidence, determine the credibility of witnesses, and make justifiable inferences from the evidence. Smith v. United States, 777 A.2d 801, 2001 D.C. App. LEXIS 156 (2001).

Reversal for insufficiency of the evidence will be warranted only if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt. Smith v. United States, 777 A.2d 801, 2001 D.C. App. LEXIS 156 (2001).

The relevant question on appeal, regarding the sufficiency of the evidence, is whether, after viewing the evidence in a light most favorable to the government, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Smith v. United States, 777 A.2d 801, 2001 D.C. App. LEXIS 156 (2001).

Like the trial court, the appellate court does not distinguish between direct and circumstantial evidence in its review of the denial of a motion for judgment of acquittal. Smith v. United States, 777 A.2d 801, 2001 D.C. App. LEXIS 156 (2001).

The Court of Appeals when reviewing the denial of a motion for judgment of acquittal, must review the evidence in the light most favorable to the government, giving full play to the right of the jury to determine the credibility, weigh the evidence, and draw justifiable inferences of fact, and drawing no distinction between direct and circumstantial evidence. Timberlake v. United States, 758 A.2d 978, 2000 D.C. App. LEXIS 208 (2000).

It is not necessary that the government's evidence compel a finding of guilt beyond a reasonable doubt, nor that the government negate every possible inference of innocence, in order to sustain a trial court's denial of a

defendant's motion for acquittal; the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Timberlake v. United States, 758 A.2d 978, 2000 D.C. App. LEXIS 208 (2000).

Reversal of a trial court's denial of a defendant's motion for judgment of acquittal is warranted only where there is no evidence upon which a reasonable juror could infer guilt beyond a reasonable doubt. Timberlake v. United States, 758 A.2d 978, 2000 D.C. App. LEXIS 208 (2000).

The Court of Appeals reverses a trial court's denial of a motion for judgment of acquittal only where the government has produced no evidence from which a reasonable mind might fairly infer guilt beyond a reasonable doubt. Timberlake v. United States, 758 A.2d 978, 2000 D.C. App. LEXIS 208 (2000).

In reviewing claims challenging the sufficiency of the evidence to support a conviction, the Court of Appeals views the evidence and draws all inferences in the light most favorable to the government. Moore v. United States, 757 A.2d 78, 2000 D.C. App. LEXIS 188 (2000).

Court of Appeals, when reviewing claims challenging the sufficiency of the evidence to support a conviction, defers to the fact finder's right to weigh the evidence, determine the credibility of witnesses, and draw inferences from the evidence presented. Moore v. United States, 757 A.2d 78, 2000 D.C. App. LEXIS 188 (2000).

Court of Appeals does not distinguish between direct and circumstantial evidence when reviewing a claim challenging the sufficiency of the evidence to support a conviction. Moore v. United States, 757 A.2d 78, 2000 D.C. App. LEXIS 188 (2000).

— Suppression or exclusion of evidence, scope of review.

In reviewing the denial of a motion to suppress evidence, the Court of Appeals accepts the trial court's factual findings unless they are clearly erroneous or not supported by the record. Crawford v. United States, 932 A.2d 1147, 2007 D.C. App. LEXIS 577 (2007).

In reviewing a trial court's denial of a motion to suppress evidence, the Court of Appeals may not disturb the trial court's findings of fact if they are supported by substantial evidence. Riley v. United States, 923 A.2d 868, 2007 D.C. App. LEXIS 239 (2007), writ of certiorari denied by 555 U.S. 830, 129 S. Ct. 42, 172 L. Ed. 2d 50, 2008 U.S. LEXIS 6577, 77 U.S.L.W. 3198 (2008).

When reviewing a challenge to the denial of a motion to suppress, appellate court defers to the trial court's findings of fact and all inferences derived therefrom unless they are clearly erroneous. Di Giovanni v. United States, 810 A.2d 887, 2002 D.C. App. LEXIS 655 (2002).

The appellate court, when reviewing the trial court's ruling on a motion to suppress, views the evidence in the light most favorable to the prevailing party, and all reasonable inferences therefrom must be viewed in favor of sustaining the trial court ruling. Davis v. United States, 781 A.2d 729, 2001 D.C. App. LEXIS 202 (2001).

If the trial court has completely denied the defendant an opportunity to cross-examine a witness, the Court of Appeals will affirm the conviction only if it can find the error harmless beyond a reasonable doubt. Villa v. District of Columbia, 778 A.2d 309, 2001 D.C. App. LEXIS 158 (2001).

The Court of Appeals accords the trial court wide latitude in the admission or exclusion of expert testimony, and the trial judge's decision should be sustained unless it is manifestly erroneous. Karamychev v. District of Columbia, 772 A.2d 806, 2001 D.C. App. LEXIS 108 (2001).

Court of Appeals, when reviewing a trial judges' disposition of a motion to suppress, must defer to that judge's finding of evidentiary fact, and view all reasonable inferences therefrom in favor of sustaining his ruling. White v. United States, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

Role of the Court of Appeals, when reviewing a trial court's disposition of a motion to suppress, is to ensure that the trial court has a substantial basis for concluding that no constitutional violation occurred. White v. United States, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

Decisions concerning whether to grant a continuance or a mistrial in the face of an asserted Brady violation rest in the trial judge's sound discretion. White v. United States, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

Error was harmless in allowing anonymous detective to provide orientation information to the grand jury, after it was empaneled but before it considered distribution of cocaine case against defendant, without his being sworn; the violation had no substantial influence on the grand jury's decision to indict. Williams v. United States, 757 A.2d 100, 2000 D.C. App. LEXIS 191 (2000).

In reviewing a suppression ruling, the Court of Appeals may consider both the evidence offered at the suppression hearing and the undisputed trial testimony. Clark v. United States, 755 A.2d 1026, 2000 D.C. App. LEXIS 151 (2000).

A trial court's finding, under discovery rule, on materiality of evidence to the preparation of a defense is reviewed for an abuse of discretion.

Clark v. United States, 755 A.2d 1026, 2000 D.C. App. LEXIS 151 (2000).

Refusal to strike testimony of witnesses on account of prosecution's failure to preserve and produce their grand jury testimony was not error where it appeared that their testimony was not recorded due to a malfunction of a recording device, without negligence or bad faith on Government's part. D.C. Code SCR, Criminal Rule 6(d); 18 U.S.C. § 3500; D.C. Code § 17-305. Washington v. United States, 343 A.2d 560, 1975 D.C. App. LEXIS 239 (1975).

Even though police officer's specific testimony was that defendant had been looking "in the direction of the parked cars," inference drawn by trial court from totality of testimony adduced on motion to suppress was not plainly wrong or without evidence to support it and, accordingly, reviewing court would accept conclusion that defendant had been "looking into parked cars." D.C. Code § 17-305. Sanders v. United States, 339 A.2d 373, 1975 D.C. App. LEXIS 403 (1975).

— Taxation actions, scope of review.

The Court of Appeals reviews decisions in civil tax cases in the same manner as other decisions of the court in civil cases tried without a jury; the Court will not set aside the tax court's judgment, except for errors of law, and will not upset the ultimate legal conclusion of the tax court when its outcome necessarily follows from its findings of fact. Hospitality Temps Corp. v. District of Columbia, 926 A.2d 131, 2007 D.C. App. LEXIS 265 (2007).

In an appeal from a decision of the Superior Court Tax Division in a civil tax assessment case, the Court of Appeals adheres to the standard of review applicable to other decisions of the Superior Court in civil cases tried without a jury; it will not disturb the factual findings of the trial court unless they are plainly wrong or without support in the record. Bender v. District of Columbia, 804 A.2d 267, 2002 D.C. App. LEXIS 389 (2002).

Regard of Court of Appeals for the special function and competence of the Tax Court does not warrant avoiding responsibility of Court of Appeals to reach a decision of its own. School St. Assocs. v. District of Columbia, 764 A.2d 798, 2001 D.C. App. LEXIS 4 (2001).

In reviewing appeals from Tax Division, Court of Appeals applies same standard of review applicable in other decisions of court in civil cases tried without jury, that is, Court will abide by trial court's factual findings unless they are "clearly erroneous," or unless finding is "plainly wrong or without evidence to support it." D.C. Code 1981, §§ 17-305(a), 47-3304(a). Hutchison Bros. Excavating Co. v. District of Columbia, 511 A.2d 3, 1986 D.C. App. LEXIS 350 (1986).

In reviewing appeals from the tax division of superior court, Court of Appeals is bound by trial court's factual findings, even when based on substantial and conflicting testimony, unless they are clearly erroneous; if findings are acceptable, Court of Appeals will not disturb the trial court's judgment unless it is plainly wrong or without evidence to support it. D.C. Code 1981, § 17-305(a). Rock Creek Plaza-Woodner Ltd. Partnership v. District of Columbia, 466 A.2d 857, 1983 D.C. App. LEXIS 472 (1983).

Issue of uncollectibility of business debt, in relation to calculation of accrual method taxpayer's gross income, is factual one which is for trial court, and Court of Appeals' review is limited to whether trial court's finding was clearly erroneous or without evidence to support it. D.C. Code 1981, § 17-305(a). Automatic Enterprises, Inc. v. District of Columbia, 465 A.2d 388, 1983 D.C. App. LEXIS 454 (1983).

— Tort actions generally, scope of review.

Defense experts' national standard of care testimony was admissible in patient's medical malpractice action against doctor, arising from removal of organs from patient's body during "second look" cancer surgery, as experts' testimony was based on national standard that was not personal or speculative, but was generally accepted within defined medical community comprised of limited group of specialists throughout country that treated rare form of cancer, and experts were board certified, attended national meetings, and treated individuals with similar types of diseases. Kordas v. Sugarbaker, 990 A.2d 496, 2010 D.C. App. LEXIS 92 (2010).

Deliverymen who stole money and jewelry from customer while they installed her washing machine were not acting in the scope of their employment, as required to hold employer liable under respondeat superior; the theft of customer's valuables was effected solely for the benefit of the deliverymen and not for the benefit of the delivery company. Schecter v. Merchs. Home Delivery, Inc., 892 A.2d 415, 2006 D.C. App. LEXIS 30 (2006).

Respondeat superior is a doctrine of vicarious liability and allows the employer to be held liable for the acts of his employees committed within the scope of their employment. Schecter v. Merchs. Home Delivery, Inc., 892 A.2d 415, 2006 D.C. App. LEXIS 30 (2006).

Potential recovery in tort for negligent hiring or retention of an employee is not based on respondeat superior, but rather on proof of negligence on the part of the employer himself; when the employer knows that the employee will have free and independent access into the homes of its customers, the employer has an obligation to make reasonable efforts to inquire into such employee's past employment and past

record. Schecter v. Merchs. Home Delivery, Inc., 892 A.2d 415, 2006 D.C. App. LEXIS 30 (2006).

Summary judgment affidavits of parents of murdered university student and of another university student, stating that District of Columbia had made assurances, directed to university students collectively, that District would provide special protection in light of a previous murder on campus, did not establish a special relationship between murdered student and District, as exception to public duty doctrine providing that District cannot be held liable for harm caused by criminals unless there was special relationship between victim and District. Varner v. District of Columbia, 891 A.2d 260, 2006 D.C. App. LEXIS 27 (2006).

University's student handbook, stating that theft by a student would "more than likely" result in automatic and immediate "dismissal," did not establish a standard of care regarding academic discipline, in wrongful death and survival action brought by parents of university student who was murdered in his on-campus dormitory room by another student, in which action parents alleged that university was negligent in insufficiently disciplining student-murderer for his thefts before he murdered their son. Varner v. District of Columbia, 891 A.2d 260, 2006 D.C. App. LEXIS 27 (2006).

In circumstances in which the defendant is alleged to have failed to protect the plaintiff from harm, and in which expert testimony on the standard of care is required, the expert witness must clearly articulate and reference a standard of care by which the defendant's actions can be measured. Varner v. District of Columbia, 891 A.2d 260, 2006 D.C. App. LEXIS 27 (2006).

Issue of whether physicians at university hospital were negligent for failing to timely diagnose and treat patient's internal bleeding, resulting in hematoma around his spinal cord that damaged his spinal tissue, causing his paralysis and subsequent loss of limbs, was for jury in patient's medical malpractice action against university alleged that its hospital, through its interventional radiologists and other medical employees, negligently treated him before, during, and after angioplasty procedure. Snyder v. George Washington Univ., 890 A.2d 237, 2006 D.C. App. LEXIS 5 (2006).

To establish causation in medical malpractice action, a plaintiff must present evidence from which a reasonable juror could find that there was a direct and substantial causal relationship between the defendant's breach of the standard of care and the plaintiff's injuries and that the injuries were foreseeable. Snyder v. George Washington Univ., 890 A.2d 237, 2006 D.C. App. LEXIS 5 (2006).

Expert testimony is typically required to establish each of the three elements of medical malpractice, except where proof is so obvious as to lie within the ken of the average lay juror. Snyder v. George Washington Univ., 890 A.2d 237, 2006 D.C. App. LEXIS 5 (2006).

In a medical malpractice case, the plaintiff must establish the applicable standard of care, a deviation from that standard, and a causal relationship between the deviation and the injury. Snyder v. George Washington Univ., 890 A.2d 237, 2006 D.C. App. LEXIS 5 (2006).

In conversion action by corporate employer against savings and loan association at which employer's embezzling bookkeeper had individual savings account, trial court's finding that association acted in accordance with reasonable commercial standards of its business in paying checks over unauthorized endorsements was clearly erroneous and not supported by evidence. U.C.C. § 3-406; D.C. Code 1981, § 17-305. American Machine Tool Distributors Asso. v. National Permanent Federal Sav. & Loan Asso., 464 A.2d 907, 1983 D.C. App. LEXIS 426 (1983).

Evidence, in action against District of Columbia to recover for damage allegedly sustained as result of the alleged negligent maintenance and design of sewer grating, supported trial court's finding that District did not receive notice from plaintiff giving correct location of accident as required by statute governing actions against District for damage to person or property. D.C. Code §§ 12-309, 17-305(a). Toomey v. District of Columbia, 315 A.2d 565, 1974 D.C. App. LEXIS 368 (1974).

Finding that parking lot was liable for damages to patron's automobile was supported by substantial evidence and was not clearly erroneous, and such was limit of the scope of court's review. D.C. Code § 17-305(a). Parking Management, Inc. v. Pride, 256 A.2d 899, 1969 D.C. App. LEXIS 325 (App. 1969).

Scope of review of Court of Appeals of District of Columbia in negligence case is to determine whether trial court's finding was supported by substantial evidence and was not clearly erroneous. D.C. Code § 17-305(a). Parello v. Lomax, 253 A.2d 463, 1969 D.C. App. LEXIS 254 (App. 1969).

— Trespass, scope of review.

In suit for damages for delay in construction project occasioned by defendant's subterranean trespass, evidence sustained trial court's findings that plaintiff's intended north-to-south progress along east side was effectively foreclosed during removal of encroachment, that no concrete whatsoever was poured south of column line 11, with sole exception of 11 yards of concrete used for underpinning, from June 15 until July 14, that effect of delay due to main encroachment should be measured from time pouring of concrete footings would have begun in encroachment area to time said work was actually commenced, that impact of encroach-

ment persisted beyond resumption of pouring of concrete on July 14, chiefly because of disruption of labor force, and that rebuilding of work force caused delay from integrating new men into work crew. D.C. Code § 17-305(a). John McShain, Inc. v. L'Enfant Plaza Properties, Inc., 402 A.2d 1222, 1979 D.C. App. LEXIS 380 (1979).

— Zoning and planning, scope of review.

When reviewing an order of the zoning commission, like decisions of other agencies, the Court of Appeals gives great deference to the agency's findings supporting the decision; the Court does not reassess the merits of the decision, but instead determines whether the findings and conclusions were arbitrary, capricious, or an abuse of discretion, or not supported by substantial evidence. Wash. Canoe Club v. District of Columbia Zoning Comm'n, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

Review of a Zoning Commission order approving a campus plan is limited to determining whether the decision is arbitrary, capricious, or otherwise not in accordance with law. Spring Valley - Wesley Heights Citizens Ass'n v. D.C. Zoning Comm'n, 856 A.2d 1174, 2004 D.C. App. LEXIS 436 (2004).

The court is obliged to affirm the Zoning Commission's conclusions so long as they are rational and not arbitrary or capricious. Spring Valley - Wesley Heights Citizens Ass'n v. D.C. Zoning Comm'n, 856 A.2d 1174, 2004 D.C. App. LEXIS 436 (2004).

Generally, Court of Appeals' review of the factual determinations of the board of zoning adjustment (BZA) is deferential. Lovendusky v. D.C. Bd. of Zoning Adjustment, 852 A.2d 927, 2004 D.C. App. LEXIS 304 (2004).

The Court of Appeals must uphold the validity of the findings of the board of zoning adjustment (BZA) if they are supported by and in accordance with reliable, probative, and substantial evidence, which is relevant evidence which a reasonable trier of fact would find adequate to support a conclusion. Lovendusky v. D.C. Bd. of Zoning Adjustment, 852 A.2d 927, 2004 D.C. App. LEXIS 304 (2004).

The Court of Appeals will not reverse the conclusions of the board of zoning adjustment (BZA) unless they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. Lovendusky v. D.C. Bd. of Zoning Adjustment, 852 A.2d 927, 2004 D.C. App. LEXIS 304 (2004).

When the Board of Zoning Adjustment's (BZA) decision turns on its interpretation of a regulation that agency is charged with implementing, that interpretation must be upheld unless it is plainly erroneous or inconsistent with the regulation. Chagnon v. D.C. Bd. of Zoning Adjustment, 844 A.2d 345, 2004 D.C. App. LEXIS 66 (2004).

The Court of Appeals must uphold decisions made by the Board of Zoning Adjustment (BZA) if they rationally flow from findings of fact supported by substantial evidence in the record as a whole. Watergate W., Inc. v. D.C. Bd. of Zoning Adjustment, 815 A.2d 762, 2003 D.C. App. LEXIS 18 (2003).

The Court of Appeals may not substitute its own judgment for that of the Board of Zoning Adjustment (BZA) so long as there is a rational basis for the BZA's decision. Watergate W., Inc. v. D.C. Bd. of Zoning Adjustment, 815 A.2d 762, 2003 D.C. App. LEXIS 18 (2003).

If the Board of Zoning Adjustment (BZA) is interpreting its own governing statute and regulations, the Court of Appeals gives its construction particular deference. Watergate W., Inc. v. D.C. Bd. of Zoning Adjustment, 815 A.2d 762, 2003 D.C. App. LEXIS 18 (2003).

When the Board of Zoning Adjustment's (BZA's) decision turns on its interpretation of a regulation that agency is charged with implementing, that interpretation must be upheld unless it is plainly erroneous or inconsistent with the regulation. Watergate W., Inc. v. D.C. Bd. of Zoning Adjustment, 815 A.2d 762, 2003 D.C. App. LEXIS 18 (2003).

While the Court of Appeals gives deference to the Board of Zoning Adjustment's findings with respect to laches, the question whether the facts, taken together, are sufficient to sustain the defense of laches is one of law to be answered de novo by the appellate court. Sisson v. D.C. Bd. of Zoning Adjustment, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

In reviewing a decision of the Board of Zoning Adjustment, the Court of Appeals must determine whether (1) the agency has made a finding of fact on each material contested issue of fact; (2) substantial evidence of record supports each finding; and (3) conclusions legally sufficient to support the decision flow rationally from the findings. Sisson v. D.C. Bd. of Zoning Adjustment, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

The Court of Appeals cannot substitute its judgment for that of the Board of Zoning Adjustment. Sisson v. D.C. Bd. of Zoning Adjustment, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

Court of Appeals' function is not to determine whether particular zoning action is or is not desirable, but rather it is to determine whether there were any errors of law in proceedings, whether findings and conclusions were arbitrary, capricious or abuse of discretion, or were not supported by substantial evidence. D.C. Code §§ 1-1510, 17-305(b). Dupont Circle Citizens Asso. v. District of Columbia Zoning Com., 355 A.2d 550, 1976 D.C. App. LEXIS 489 (1976), writ of certiorari denied by 429 U.S. 966, 97 S. Ct. 396, 50 L. Ed. 2d 334, 1976 U.S. LEXIS 3628 (1976).

As long as zoning commission proceedings were according to law, its decisions will carry presumption of regularity on appeal and Court of Appeals will not weigh evidence and substitute its judgment for that of commission. D.C. Code§§ 1-1510, 17-305(b). Dupont Circle Citizens Asso. v. District of Columbia Zoning Com., 355 A.2d 550, 1976 D.C. App. LEXIS 489 (1976), writ of certiorari denied by 429 U.S. 966, 97 S. Ct. 396, 50 L. Ed. 2d 334, 1976 U.S. LEXIS 3628 (1976).

Sufficiency of findings.

Trial court's statement that it was "persuaded" by arguments of elevator maintenance contractor was insufficient to support denial of plaintiff's motion for relief from judgment dismissing negligence action arising from elevator fall; trial court made no factual findings concerning whether plaintiff had "actual notice" of defendants' joint motion to dismiss and motion for costs, there were no specific findings concerning plaintiff's efforts to respond to defendants' request that she submit to an independent medical examination (IME), or her promptness in moving to reinstate complaint, and defendants' opposition to motion to reinstate did not discuss the merits of complaint. Brown v. Kone, Inc., 841 A.2d 331, 2004 D.C. App. LEXIS 33 (2004).

The exercise of discretion must be based on a firm factual foundation, and the court abuses its discretion if the stated reasons for its actions do not rest upon a sufficient factual predicate. Howard Univ. v. Lacy, 828 A.2d 733, 2003 D.C. App. LEXIS 469 (2003).

When reviewing a challenge to the sufficiency of evidence, appellate court must accord equal weight to circumstantial evidence and direct evidence. Williams v. United States, 756 A.2d 380, 2000 D.C. App. LEXIS 138 (2000).

On appeal of dismissal of charges for possession of heroin, as sanction for prosecution's failure to comply with discovery order, remand was required in order for the trial court to make specific findings regarding the materiality of Drug Enforcement Administration's (DEA) reports, on the maintenance of instruments and the protocols and training materials used by its laboratory, to the preparation of the defense and the burdensomeness of that request to the government, as required under discovery rule. United States v. Curtis, 755 A.2d 1011, 2000 D.C. App. LEXIS 126 (2000).

Although Court of Appeals' review of lower court's factual determinations must necessarily be limited, finder of fact must provide Court of Appeals with findings sufficient to facilitate appellate review. D.C. Code 1981, § 17-305(a). Thomas v. Thomas, 477 A.2d 728, 1984 D.C. App. LEXIS 428 (1984).

Findings supported by the evidence are binding on the District of Columbia Court of Appeals. D.C. Code § 17-305(a). King v. United States, 370 A.2d 1370, 1977 D.C. App. LEXIS 440 (1977).

§ 17-306. Determination of appeals.

The District of Columbia Court of Appeals may affirm, modify, vacate, set aside or reverse any order or judgment of a court or any division or branch thereof, or any administrative order or decision, lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate order, judgment, or decision, or require such further proceedings to be had, as is just in the circumstances.

(Dec. 23, 1963, 77 Stat. 615, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 565, Pub. L. 91-358, title I, § 146(a)(6).)

Prior Codifications. — 1981 Ed., § 17-306. 1973 Ed., § 17-306.

CASE NOTES

Analysis

Administrative proceedings.
—Exhaustion of administrative remedies, administrative proceedings.
—In general.
—Unemployment compensation, administrative proceedings.
Amicus curiae.
Bail.
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Disposition of cause on appeal.
—In general.
—Reduction or mitigation of sentence, disposition of cause on appeal.
—Remand for determination or reconsideration, disposition of cause on appeal.
—Reversal, disposition of cause on appeal.
Jurisdictional defects.
Scope of review, generally.

Administrative proceedings.

— Exhaustion of administrative remedies, administrative proceedings.

Principle that no one is entitled to judicial relief for a supposed or threatened injury until prescribed administrative remedy has been exhausted serves to promote judicial efficiency. Barnett v. District of Columbia Dep't of Employment Services, 491 A.2d 1156, 1985 D.C. App. LEXIS 386 (1985).

Where a statute demonstrates congressional intent to require administrative determination in advance of judicial consideration of a claim, claimant must make a strong showing of compelling circumstances to justify equity's intervention in order to persuade court to excuse a failure to exhaust and examine claim's merits. Barnett v. District of Columbia Dep't of Employment Services, 491 A.2d 1156, 1985 D.C. App. LEXIS 386 (1985).

— In general.

To present a prima facie case of discrimination, a plaintiff must show that (1) he is a member of a protected class; (2) he suffered an adverse employment action; and (3) the unfavorable action gives rise to an inference of discrimination. Rountree v. Johanns, 382 F.Supp.2d 19, 2005 U.S. Dist. LEXIS 16400 (2005), affirmed by 2006 U.S. App. LEXIS 28531 (D.C. Cir. Nov. 16, 2006).

Hospital's petition for review of decision by Director of Department of Employment Services (DOES) was timely filed within 30 days of receiving notice of decision in conformance with DOES regulations, and thus, Court of Appeals had jurisdiction, even if hospital had received informal notice of the decision more than 30 days before the date of filing the petition; such informal notice was not in conformance with the agency's regulations. Howard Univ. Hosp. v. D.C. Dep't of Empl. Servs., 881 A.2d 567, 2005 D.C. App. LEXIS 451 (2005).

Failure to timely appeal at administrative level should foreclose both administrative and judicial review of claim. Barnett v. District of Columbia Dep't of Employment Services, 491 A.2d 1156, 1985 D.C. App. LEXIS 386 (1985).

Neither subsequently enacted Administrative Procedure Act nor District of Columbia Court Reform and Criminal Procedure Act of 1970 changed method of seeking review as provided in statute making review in safety responsibility cases discretionary on application for allowance of appeal, and thus, the Court of Appeals was not required to accept safety responsibility case on petition for review as matter of right from contested case determination under Administrative Procedure Act, but rather, review was discretionary on application for allowance of appeal. D.C. Code §§ 1-1510, 17-306, 40-417 et seq., 40-420, 40-437; District of Columbia Court Reform and Criminal Procedure Act of 1970, 84 Stat. 473. Thomas v. District of Columbia Board of Appeals & Review, 355 A.2d 789, 1976 D.C. App. LEXIS 523 (1976).

— Unemployment compensation, administrative proceedings.

Court of Appeals is given jurisdiction over decisions of Department of Employment Services. D.C. Code 1981, § 46-113. Barnett v. District of Columbia Dep't of Employment Services, 491 A.2d 1156, 1985 D.C. App. LEXIS 386 (1985).

Exhaustion of administrative remedies requirement incorporated within unemployment compensation law is not jurisdictional and equity permits Court of Appeals to relax requirement in exceptional cases. Barnett v. District of Columbia Dep't of Employment Services, 491 A.2d 1156, 1985 D.C. App. LEXIS 386 (1985).

Department of Employment Service's notice to claimant which stated that determination by Office of Appeals and Review was a "final decision" and that claimant had right to judicial review waived any defense due to claimant's procedural default. Barnett v. District of Columbia Dep't of Employment Services, 491 A.2d 1156, 1985 D.C. App. LEXIS 386 (1985).

Claimant demonstrated "compelling circumstances" to justify review by Court of Appeals of denial of unemployment compensation, notwithstanding his failure to exhaust administrative remedies where claimant was not able to secure a court order expunging his criminal record to support his claim that he had not lied on employment application until after all administrative deadlines had passed and where claimant's appeal of hearing examiner's decision to Office of Appeals and Review prior to securing court order of expungement would have been useless. Barnett v. District of Columbia Dep't of Employment Services, 491 A.2d 1156, 1985 D.C. App. LEXIS 386 (1985).

Amicus curiae.

Even if amicus curiae counsel had standing to take appeal, such appeal would be limited to issues that amicus was appointed to deal with. Briggs v. United States, 597 A.2d 370, 1991 D.C. App. LEXIS 260 (1991).

Bail.

Although accused charged with grand larceny and released on personal recognizance bond allegedly threatened a witness and was arrested on charge of obstructing justice, setting of surety bond of $5,000 was not justified on theory that, in view of the serious nature of the pending charges, amounting to an assault on integrity of judicial system, and the unemployment of accused, accused was unreliable and unlikely to abide by nonfinancial condi-

tions of release; thus case must be remanded for proceedings on issue of pretrial detention or appropriate conditions of release. D.C. Code §§ 17-306, 23-1321, 23-1322, 23-1322(a), (a)(3), (d). Jones v. United States, 347 A.2d 399, 1975 D.C. App. LEXIS 272 (1975).

Contempt.

On review of order of criminal contempt, Court of Appeals reviews evidence in light most favorable to government. Bethard v. District of Columbia, 650 A.2d 651, 1994 D.C. App. LEXIS 216 (1994).

On review of order of criminal contempt, trial judge's findings cannot be disturbed unless they are shown to be without evidentiary support or plainly wrong. Bethard v. District of Columbia, 650 A.2d 651, 1994 D.C. App. LEXIS 216 (1994).

Disposition of cause on appeal.

— In general.

The Court of Appeals may affirm a judgment on any valid ground, even if that ground was not relied upon by the trial judge or raised or considered in the trial court. In re Walker, 856 A.2d 579, 2004 D.C. App. LEXIS 407 (2004).

University employer's contention on motion for summary judgment that, in order for provisions of an employment handbook to constitute an implicit contractual limitation upon an employer's otherwise unfettered right to terminate its employees, employee must demonstrate that all of elements of a unilateral contract are present, or that employer is otherwise estopped to deny promises set forth in handbook, was sufficient to preserve for appeal employer's claim that the intent of the parties, and the employee's individual circumstances and understanding, affected the proper interpretation of the handbook and the outcome of the case as to whether employer was liable for breach of an alleged contract of employment. Howard Univ. v. Lacy, 828 A.2d 733, 2003 D.C. App. LEXIS 469 (2003).

Following affirmance of tenants' emotional distress claims against landlords and reversal of punitive damages awards, tenants could execute upon judgment for compensatory damages awarded on emotional distress claims against landlords without awaiting retrial on punitive damages; landlords had every opportunity to challenge both finding of liability undergirding compensatory awards and size of awards, liability and compensatory damages issues and punitive damages issues were discrete, and retrial on punitive damages alone would not be unfair to landlords. D.C. Code 1981, § 17-306. Jonathan Woodner Co. v. Breeden, 681 A.2d 1098, 1996 D.C. App. LEXIS 159 (1996).

Although court was dismissing appeal because the judgment was not final, it could nonetheless remand with instructions. Merrell Dow Pharmaceuticals v. Oxendine, 593 A.2d 1023, 1991 D.C. App. LEXIS 183 (1991), remanded by 649 A.2d 825, 1994 D.C. App. LEXIS 210 (D.C. 1994).

Notwithstanding the deficiency of petition, which was insufficient to support adjudication of child as habitually disobedient and ungovernable, rather than an outright reversal or dismissal thereby producing irrational consequences flowing from a forced reunion in an apparently deteriorated family structure Court of Appeals remanded cause to trial court for commencement of such further proceedings within 30 days as might be deemed just in circumstances; if further proceedings were not begun within that time adjudication would be vacated. D.C. Code §§ 16-2301(8)(A)(iii), (8)(B), 17-306. In re C.G.S., 372 A.2d 1017, 1977 D.C. App. LEXIS 470 (1977).

— Reduction or mitigation of sentence, disposition of cause on appeal.

Absent legislative direction that it must undertake such a task, and firm guidance as to applicable standards for such review, Court of Appeals may not enter the area of reviewing excessiveness of sentences. 18 U.S.C. § 2106; D.C. Code § 17-306. Foster v. United States, 290 A.2d 176, 1972 D.C. App. LEXIS 375 (1972).

— Remand for determination or reconsideration, disposition of cause on appeal.

Remand was required for further findings on issue of whether juror number three, who allegedly had not been polled, assented to guilty verdict, in prosecution for first-degree child sexual abuse and cruelty to children, in which trial transcript reflected that only 11 out of 12 jurors had been polled after jury had announced guilty verdict; infirmities in proof on this issue were not enough to demonstrate that trial court's finding that verdict had been unanimous were clearly erroneous, to point that convictions had to be reversed, but they were enough to require greater certainty before one could say with sufficient confidence that juror number three had joined verdict. Jenkins v. United States, 870 A.2d 27, 2005 D.C. App. LEXIS 39 (2005).

Question of whether doctor, clinic for which he worked, and District of Columbia, which operated clinic, constituted a single tortfeasor or more than one or two tortfeasors, and thus the amount of contribution to which radiologist and his employer were entitled from joint tortfeasors, required remand in patient's malpractice action; jury found radiologist and employer were negligent, trial court made post-trial findings that doctor and District were also negligent, patient had settled with District and

doctor prior to trial, and damages awarded at trial were twice the amount of the pre-trial settlement. Hubbard v. Chidel, 790 A.2d 558, 2002 D.C. App. LEXIS 23 (2002), remanded by 840 A.2d 689, 2004 D.C. App. LEXIS 3 (D.C. 2004).

Questions of whether radiologist, whose employer gave timely notice to District of Columbia of claim for contribution, was required to give the District separate notice, and whether a proper claim for contribution by radiologist and his employer against the District was before the trial court, required remand. Hubbard v. Chidel, 790 A.2d 558, 2002 D.C. App. LEXIS 23 (2002), remanded by 840 A.2d 689, 2004 D.C. App. LEXIS 3 (D.C. 2004).

Remand was warranted in the interests of justice, in burglary case involving items found during improper search of bag defendant was carrying, to determine whether discovery of bag's contents would inevitably have occurred properly once a second officer arrived and identified defendant as the person she had seen minutes before wearing red pants that matched description of burglary suspect. McFerguson v. United States, 770 A.2d 66, 2001 D.C. App. LEXIS 59 (2001), remanded sub nomine Worthington v. United States, 805 A.2d 929, 2002 D.C. App. LEXIS 496 (D.C. 2002).

Reversal of trial court's ruling that denied motion to amend answer to assert limitations defense to arrestee's intentional tort claim warranted remand to allow arrestee to pursue additional discovery on remaining claims where he voluntarily dismissed remaining counts after denial of government's motion to amend. D.C. Code 1981, § 17-306. District of Columbia v. Tinker, 691 A.2d 57, 1997 D.C. App. LEXIS 35 (1997).

Remand was necessary to allow hearing examiner for Rental Housing Commission (RHC) to clarify apparently irreconcilable findings about whether landlord's expenditures that formed basis of petition for hardship rent ceiling increase were depreciable capital expenditures or were extraordinary operating expenses; repair expenses could not be both part of landlord's capital improvement plan and not part of plan. D.C. Code 1981, § 17-306. Columbia Realty Venture v. District of Columbia Rental Housing Com., 573 A.2d 362, 1990 D.C. App. LEXIS 81 (1990).

Remand was necessary to allow hearing examiner for Rental Housing Commission (RHC) to state with clarity why he decided to average repair and painting costs over two years, rather than permit entire deduction in one year, for purposes of landlord's petition for hardship rent ceiling increase. D.C. Code 1981, § 17-306. Columbia Realty Venture v. District of Columbia Rental Housing Com., 573 A.2d 362, 1990 D.C. App. LEXIS 81 (1990).

Material issue of fact concerning whether defendant was attempting to flee when officers knocked and announced their intent to search premises precluded appellate court from determining whether search of defendant, who was one of five persons in private house at the time of search and who was not named in search warrant, violated defendant's Fourth Amendment rights and thus judgment of conviction would be vacated and case remanded to trial court to make necessary factual findings and rule de novo on motion to suppress and if court upheld search and seizure and entered new judgment of conviction, defendant would have usual right to appeal. D.C. Code 1981, § 17-306; U.S. Const.Amend. 4. White v. United States, 512 A.2d 283, 1986 D.C. App. LEXIS 367 (1986).

Remand was required to determine whether defendant's absence during part of the trial was voluntary. U.S. Const.Amend. 6; D.C. Code 1981, § 17-306; Criminal Rules 43, 43(b)(1). Black v. United States, 506 A.2d 1130, 1986 D.C. App. LEXIS 302 (1986).

Court of Appeals has statutory authority to remand any cause or require further proceedings in interest of justice. D.C. Code 1981, § 17-306. Staton v. United States, 466 A.2d 1245, 1983 D.C. App. LEXIS 497 (1983).

Since appellant, who had been found guilty of attempted robbery while armed after a delinquency petition was filed against him, had become 18 years of age, so that he was no longer subject to jurisdiction of family division, and more than four years had passed since holding of suppression hearing, case would be remanded to trial court for additional findings, without prejudice to dismissal of original delinquency petition. D.C. Code 1973, §§ 16-2301(3), 17-306, 22-2902 to 22-3202. In re P., 439 A.2d 460, 1981 D.C. App. LEXIS 404 (1981).

— Reversal, disposition of cause on appeal.

Where the record that the parties make is inadequate to support the determination to be made, the trial court is often required to undertake a special factual inquiry and seek the answers to particular questions or raise questions about particular concerns prior to rendering a discretionary decision in certain areas; if the court failed to undertake a required factual inquiry or if it ignored an apparent deficiency in the record, reversal is appropriate. In re Orshansky, 804 A.2d 1077, 2002 D.C. App. LEXIS 488 (2002).

In reviewing a decision for abuse of discretion, Court of Appeals must assess whether the trial court failed to consider a relevant factor or relied upon an improper factor, and whether the reasons given reasonably support the conclusion; if the trial court's decision is supported

by improper reasons, reasons that are not founded in the record, or reasons which contravene the policies meant to guide the trial court's discretion or the purposes for which the determination was committed to the trial court's discretion, reversal likely is called for. In re Orshansky, 804 A.2d 1077, 2002 D.C. App. LEXIS 488 (2002).

It was just under circumstances to reverse defendant's conviction of simple assault, upon determining that her other two convictions of assault with dangerous weapon and her codefendants' convictions of assault with intent to kill while armed and simple assault were subject to reversal, where conduct of all parties was interwoven into single joint event. D.C. Code 1981, § 17-306. Adams v. United States, 558 A.2d 348, 1989 D.C. App. LEXIS 93 (1989).

Reversible evidentiary errors in trial of principals and aider and abettor for arranging murder of one principal's husband, which necessitated reversal of principals' convictions, also warranted reversal of conviction of aider and abettor, insofar as Government's whole theory of abettor's consequential liability depended upon his solicitation of the killers at the behest of the principals, and the principals' participation in arranging for the slaying. D.C. Code 1981, § 17-306. Morriss v. United States, 554 A.2d 784, 1989 D.C. App. LEXIS 27 (1989).

The District of Columbia Court of Appeals, vested with authority to hear appeals from convictions in criminal proceedings of the superior court and to reverse such convictions where the proceedings were so infected with error as to require reversal, is authorized to consider whether infirmities in the jury-selection process vitiate a conviction and, on so holding, reverse that conviction. U.S. Const.Art. 1, § 1 et seq.; D.C. Code 1973, § 11-1902; D.C. Code 1981, §§ 11-721, 17-306. Sweet v. United States, 449 A.2d 315, 1982 D.C. App. LEXIS 407 (1982).

Where proof was insufficient to sustain conviction for grand larceny but was sufficient to sustain conviction for petit larceny, Court of Appeals could direct trial court to enter judgment accordingly. D.C. Code § 17-306. Williams v. United States, 376 A.2d 442, 1977 D.C. App. LEXIS 358 (1977).

Jurisdictional defects.

Trial court did not abuse its discretion in dismissing wrongful discharge and related claims on basis of forum non conveniens, upon balancing private and public interests in maintaining the action in the District and noting that claimant had alternative forum for her nonstatutory claims, but vacation and reconsideration were warranted where the trial court's entire analysis was based on the erroneous conclusion that claimant's place of employment was at all times in Maryland. D.C. Code 1981, § 17-306; Civil Rule 12(b)(1). Matthews v. Automated Business Systems & Services, Inc., 558 A.2d 1175, 1989 D.C. App. LEXIS 100 (1989).

Scope of review, generally.

Court of Appeals reviews trial court judgments, not opinions. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Issue of finality of damage award being appealed was one of appellate jurisdiction and could not be waived, and issue thus could be raised on appeal by the party which had moved for entry of the judgment. Merrell Dow Pharmaceuticals v. Oxendine, 593 A.2d 1023, 1991 D.C. App. LEXIS 183 (1991), remanded by 649 A.2d 825, 1994 D.C. App. LEXIS 210 (D.C. 1994).

§ 17-307. Time for taking or applying for allowance of appeals.

(a) Except as provided by subsection (b) of this section, the time during which an appeal may be taken pursuant to section 11-721 or 11-722 may be fixed by rules of the District of Columbia Court of Appeals.

(b) Applications for the allowance of appeals from judgments of the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia, and from judgments in the criminal division of that court where the penalty imposed is less than $50, specified by section 11-721(c), shall, in each case, be filed in the District of Columbia Court of Appeals within three days from the date of judgment.

(Dec. 23, 1963, 77 Stat. 615, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 565, Pub. L. 91-358, title I, § 146(a)(7).)

Prior Codifications. — 1981 Ed., § 17-307. 1973 Ed., § 17-307.

CASE NOTES

ANALYSIS

Administrative proceedings.
Contempt citations.
In general.

Administrative proceedings.

Failure to timely appeal at administrative level should foreclose both administrative and judicial review of claim. Barnett v. District of Columbia Dep't of Employment Services, 491 A.2d 1156, 1985 D.C. App. LEXIS 386 (1985).

Department of Employment Services rule requiring that all petitions for reconsideration based on new information be filed within ten days of agency's decision cannot be said to afford such a fair opportunity to claimants who, for reasons beyond their control, are unable to secure relevant new information within this restricted time period; in exceptional cases where a fair opportunity has been denied, relaxation of the exhaustion rule may be proper. Barnett v. District of Columbia Dep't of Employment Services, 491 A.2d 1156, 1985 D.C. App. LEXIS 386 (1985).

Claimant demonstrated "compelling circumstances" to justify review by Court of Appeals of denial of unemployment compensation, notwithstanding his failure to exhaust administrative remedies where claimant was not able to secure a court order expunging his criminal record to support his claim that he had not lied on employment application until after all administrative deadlines had passed and where claimant's appeal of hearing examiner's decision to Office of Appeals and Review prior to securing court order of expungement would have been useless. Barnett v. District of Columbia Dep't of Employment Services, 491 A.2d 1156, 1985 D.C. App. LEXIS 386 (1985).

Exhaustion of administrative remedies requirement incorporated within unemployment compensation law is not jurisdictional and equity permits Court of Appeals to relax requirement in exceptional cases. Barnett v. District of Columbia Dep't of Employment Services, 491 A.2d 1156, 1985 D.C. App. LEXIS 386 (1985).

Contempt citations.

Motorist's notice of appeal from trial court adjudication finding him guilty of criminal contempt and fining him $25 through summary proceedings was not adequate substitute for application for allowance of appeal that was required, and accordingly his appeal was dismissed since application was not filed within three days from date of judgment. D.C. Code §§ 11-721(c), 17-307(b); D.C. Code SCR, Criminal Rule 42(a); D.C. Code Court of Appeals Rules, Rule 6(a). In re Kane, 422 A.2d 995, 1980 D.C. App. LEXIS 393 (1980).

In general.

Time for filing application for leave to appeal is jurisdictional and may not be extended. D.C. Code 1981, § 17-307(b); Court of Appeals Rules 6(a), 26(b). Sturgis v. Kanter, 728 A.2d 1229, 1999 D.C. App. LEXIS 113 (1999).

DIVISION III. DECEDENTS' ESTATES AND FIDUCIARY RELATIONS.

TITLE 18. WILLS.

Chapter
1. General Provisions.
3. Devises and Bequests.
5. Probate of Wills [Repealed].
7. International Will; Information Registration.

Chapter 1. General Provisions.

Sec.
18-101. Definitions.
18-102. Capacity to make a will.
18-103. Execution of written will; attestation.
18-104. Devises, legacies, etc., to attesting witnesses.
18-105. Retention or demand of void devise or legacy by attesting witness prohibited.
18-106. Creditors as competent witnesses.
18-107. Nuncupative wills.
18-108. Execution of power by will.
18-109. Revocation of wills; revival.
18-110. Opening will before delivery to Probate Court.
18-111. Withholding will.
18-112. Taking and carrying away, or destroying, mutilating, or secreting will.

§ 18-101. Definitions.

As used in this title, unless the context requires a different meaning:
words importing the singular include the plural, and words importing the plural include the singular;
the present tense includes the future as well as the present;
"District Court" means the United States District Court for the District of Columbia; and
"Probate Court" and "court", respectively, mean the Superior Court of the District of Columbia.

(Sept. 14, 1965, 79 Stat. 685, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 566, Pub. L. 91-358, title I, § 147(1); June 4, 1982, D.C. Law 4-111, § 2(c), 29 DCR 1684.)

Prior Codifications. — 1981 Ed., § 18-101. 1973 Ed., § 18-101.

Legislative history of Law 4-111. — Law 4-111, the "Anti-Sex Discriminatory Language Act and Uniform Disposition of Unclaimed Property Act of 1980 Amendments Act of 1982," was introduced in Council and assigned Bill No. 4-374, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 9, 1982, and March 23, 1982, respectively. Signed by the Mayor on April 12, 1982, it was assigned Act No. 4-174 and transmitted to both Houses of Congress for its review.

Editor's notes. — Section 30 of D.C. Law 15-354 provided that Title 18 is designated Title 18 of the District of Columbia Official Code.

CASE NOTES

Analysis

In general.
Law governing.

In general.

In absence of District of Columbia decisions construing statute regarding cancellation of wills, cases from other jurisdictions having similar statutory provisions are persuasive. D.C. Code 1940, § 19-103. In re Smith's Estate, 77 F.Supp. 217, 1948 U.S. Dist. LEXIS 2644 (D.D.C1948).

Law governing.

Where testator bequeathed residuary estate to widow for life with remainder to his son and with direction that, if son should die without leaving lawful issue, the whole of estate after death of widow should pass to testator's heirs at law, and the son predeceased the widow, the heirs of testator were to be ascertained as of date of death of life tenant, and therefore method of distribution among the heirs was to be determined by statute in effect at that time rather than by statute in effect at time of testator's death. Code of Laws 1901, § 955; D.C. Code 1940, § 18-105. Central Dispensary and Emergency Hospital v. Saunders, 165 F.2d 626, 1948 U.S. App. LEXIS 4055 (1948).

Where, at time will was made, testatrix' heirs at law consisted of one brother and nine nieces and nephews, and will gave realty to testatrix' brother for life and after death of brother "to such persons as may at the time of the death of my said brother be my heirs at law", the testatrix' heirs were to be determined as of date of death of her brother rather than at the time of death of testatrix. D.C. Code 1940, § 18-105. Costello v. Costello, 149 F.2d 379, 1945 U.S. App. LEXIS 2599 (1945).

§ 18-102. Capacity to make a will.

A will, testament, or codicil is not valid for any purpose unless the person making it is at least 18 years of age and, at the time of executing or acknowledging it as provided by this chapter, of sound and disposing mind and capable of executing a valid deed or contract.

(Sept. 14, 1965, 79 Stat. 686, Pub. L. 89-183, § 1; July 22, 1976, D.C. Law 1-75, § 4(a), 23 DCR 1180.)

Prior Codifications. — 1981 Ed., § 18-102. 1973 Ed., § 18-102.

Legislative history of Law 1-75. — Law 1-75, the "District of Columbia Age of Majority Act," was introduced in Council and assigned Bill No. 1-252, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on April 6, 1976, and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and transmitted to both Houses of Congress for its review.

CASE NOTES

Analysis

Degree of mental capacity.
Evidence of capacity.
Legislative intent.
Presentation of issue.
Presumptions and burden of proof.
Sufficiency of testator's understanding.

Degree of mental capacity.

Under District of Columbia law, in order to make valid will, testator must be of sound and disposing mind and capable of executing valid deed or contract. D.C. Code § 18-102. In re Estate of Weir, 475 F.2d 988, 1973 U.S. App. LEXIS 11259 (C.A.D.C. 1973).

Evidence of capacity.

Evidence in will contest did not warrant submission to jury of issue of testator's lack of testamentary capacity. D.C. Code § 18-102. In re Estate of Weir, 475 F.2d 988, 1973 U.S. App. LEXIS 11259 (C.A.D.C. 1973).

Fact that testator made "unnatural disposition" of his estate was not, in and of itself, indication of testamentary incapacity. D.C. Code § 18-102. In re Estate of Weir, 475 F.2d

988, 1973 U.S. App. LEXIS 11259 (C.A.D.C. 1973).

Lay opinion testimony of issues of testamentary is admissible in will contest. In re Estate of Wilson, 416 A.2d 228, 1980 D.C. App. LEXIS 306 (1980).

Legislative intent.

Congress in adopting provision that will was not valid unless person making it was of required age and at time of executing or acknowledging it was of sound and disposing mind and capable of executing valid deed or contract did not intend to deprive mentally competent person of testamentary capacity merely because he was subject to conservatorship. D.C. Code § 18-102. Rossi v. Fletcher, 418 F.2d 1169, 1969 U.S. App. LEXIS 11718 (C.A.D.C. 1969), writ of certiorari denied by 396 U.S. 1009, 90 S. Ct. 568, 24 L. Ed. 2d 501, 1970 U.S. LEXIS 3324 (1970).

Presentation of issue.

Where caveator failed to frame an issue as to competency of testator either upon her initial application or by motion to amend the order framing the issues or by a later caveat reasonably explained as to delay, caveator could not be heard to contest the decree admitting will to probate upon the issue of competency. D.C. Code 1940, §§ 19-307 to 19-309; Probate Rules of District Court of the United States for the District of Columbia, rule 26. Lanston v. Schwartz, 174 F.2d 31, 1949 U.S. App. LEXIS 2146 (C.A.D.C. 1949).

Presumptions and burden of proof.

There is a presumption in favor of testamentary capacity. D.C. Code § 18-102. In re Estate of Weir, 475 F.2d 988, 1973 U.S. App. LEXIS 11259 (C.A.D.C. 1973).

Sufficiency of testator's understanding.

Under District of Columbia law, the "sound and disposing mind" necessary to make valid will means that the testator must have had, at the time of the execution of the instrument, sufficient mental capacity to dispose of his property or state with judgment and understanding, considering the nature and character of the estate as well as the relative claims of different persons who would be the natural objects of his bounty. D.C. Code § 18-102. In re Estate of Weir, 475 F.2d 988, 1973 U.S. App. LEXIS 11259 (C.A.D.C. 1973).

§ 18-103. Execution of written will; attestation.

A will or testament, other than a will executed in the manner provided by section 18-107, is void unless it is:

(1) in writing and signed by the testator, or by another person in his presence and by his express direction; and

(2) attested and subscribed in the presence of the testator, by at least two credible witnesses.

(Sept. 14, 1965, 79 Stat. 686, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 18-103. 1973 Ed., § 18-103.

CASE NOTES

Analysis

Ancient documents.
Execution of will.
—Attestation and subscription by witnesses, execution of will.
—Mode and requisites.
—Signature or subscription by or for testator, execution of will.
Holographic wills.
Instruments which may be admitted to probate.
Presumptions and burden of proof.
Will contests.

Ancient documents.

Doctrine that ancient document may be accepted as being genuinely executed for purposes of being submitted to jury is applicable to wills. D.C. Code § 18-103. In re Estate of Hall, 328 F. Supp. 1305, 1971 U.S. Dist. LEXIS 13131 (1971), affirmed by 466 F.2d 340, 151 U.S. App. D.C. 169, 1972 U.S. App. LEXIS 8301 (1972).

Execution of will.

— Attestation and subscription by witnesses, execution of will.

Subscribing witnesses need not see signature of testator, provided his signature is already on the will, and he acknowledges it as his will. D.C. Code 1940, § 19-103. Betts v. Lonas, 172 F.2d 759, 1948 U.S. App. LEXIS 2004 (C.A.D.C. 1948).

Will was valid even though attesting witnesses signed it before testatrix where all signed at substantially same time and in each other's presence. D.C. Code 1940, § 19-103. Billings v. Woody, 167 F.2d 756, 1948 U.S. App. LEXIS 2494 (1948).

Where evidence showed that testatrix finished entire document in one sitting, signed it, had one witness sign it, and then went to bed, evidence that, at some unknown time, other witness signed first page which was presented for probate failed to establish that will was validly attested by second witness. D.C. Code § 18-103. In re Estate of Hall, 328 F. Supp. 1305, 1971 U.S. Dist. LEXIS 13131 (1971), affirmed by 466 F.2d 340, 151 U.S. App. D.C. 169, 1972 U.S. App. LEXIS 8301 (1972).

Testator's purported will lacked proper attestation and, therefore, was void; statute required that two or more witnesses attest and subscribe to will in testator's presence, will only bore testator's signature and raised seal of notary public, and affidavits from non-attesting witnesses, who could not verify that they witnessed two attesting witnesses sign will in presence of testator, failed to satisfy statutory requirements for due execution of will. In re Estate of Henneghan, 45 A.3d 684, 2012 D.C. App. LEXIS 299 (2012).

Will executed in accordance with statutory attestation procedures was not void, though the original could not be found. D.C. Code 1981, § 18-103. In re Estate of Burleson, 738 A.2d 1199, 1999 D.C. App. LEXIS 207 (1999).

Statute which governs requisites of proper execution of wills does not require that testator sign will in presence of witnesses, but requires only that witnesses sign in presence of testator; if one or both witnesses did not see testator sign, will proponents must establish that testator's signature was already on document when witnesses signed and that testator acknowledged document as his or her will. D.C. Code 1981, § 18-103. Davis v. Davis, 471 A.2d 1008, 1984 D.C. App. LEXIS 321 (1984).

— Mode and requisites.

A litigant may not furnish by parol those features of testament for which statute of wills demands peculiarly formalized writing. D.C. Code § 18-103. In re Estate of Kerr, 433 F.2d 479, 1970 U.S. App. LEXIS 10725 (C.A.D.C. 1970).

It is preferable for testatrix to sign will first, but validity of will should not depend on who signs it first if all sign at substantially the same time and in the presence of each other. D.C. Code 1940, § 19-103. Billings v. Woody, 167 F.2d 756, 1948 U.S. App. LEXIS 2494 (1948).

Writing which purported to be the will of decedent, which was executed by decedent, folded and sealed in an envelope, the face of which envelope was inscribed "my last will and testament" followed by witnesses' signatures under such inscription, was not entitled to probate because paper upon which witnesses affixed their signatures was not physically attached to paper purporting to be the will and witnesses had not affixed their signatures to will itself. D.C. Code 1940, § 19-103. In re Lee's Estate, 80 F.Supp. 293, 1948 U.S. Dist. LEXIS 2079 (D.D.C1948).

— Signature or subscription by or for testator, execution of will.

Purpose of signature to will is both to identify testator and to authenticate document, and in order to be testamentary in character signature must indicate something more than mere act of identifying maker of document in question. D.C. Code § 18-103. In re Estate of Hall, 328 F. Supp. 1305, 1971 U.S. Dist. LEXIS 13131 (1971), affirmed by 466 F.2d 340, 151 U.S. App. D.C. 169, 1972 U.S. App. LEXIS 8301 (1972).

There is no requirement that signature be at any particular place on will to be effective but there must be proof that testator intended signature to bind his intention. D.C. Code § 18-103. In re Estate of Hall, 328 F. Supp. 1305, 1971 U.S. Dist. LEXIS 13131 (1971), affirmed by 466 F.2d 340, 151 U.S. App. D.C. 169, 1972 U.S. App. LEXIS 8301 (1972).

Document consisting of one page of what evidence showed to be three-page will and containing unfinished sentence at bottom of back page was incomplete and testatrix' signature on first page could not be viewed as carrying with it any testamentary intent entitling document to be admitted to probate. D.C. Code§ 18-103. In re Estate of Hall, 328 F. Supp. 1305, 1971 U.S. Dist. LEXIS 13131 (1971), affirmed by 466 F.2d 340, 151 U.S. App. D.C. 169, 1972 U.S. App. LEXIS 8301 (1972).

Holographic wills.

District of Columbia statute requiring attestation in presence of testator by two witnesses is not subject to an exception for holographic wills. D.C. Code §§ 18-103, 18-107. In re Estate of Hall, 466 F.2d 340, 1972 U.S. App. LEXIS 8301 (C.A.D.C. 1972).

Purported beneficiary of one page holographic writing of decedent, which made a disposition to organization for care of disabled sailors and seamen of United States Navy and their families but which contained an incomplete sentence and did not effect a complete disposition of property, failed to sustain burden of showing due execution of the prescribed formalities since it was certain that one of the purported witnesses did not see decedent sign her name or write anything on part of the paper offered and it was not certain that witness attested the original document on the last page thereof. D.C. Code §§ 18-103, 18-107. In re

Estate of Hall, 466 F.2d 340, 1972 U.S. App. LEXIS 8301 (C.A.D.C. 1972).

Holographic wills must be attested and subscribed in presence of testator by two witnesses, although they need not sign in each other's presence or physically observe other's signature. D.C. Code § 18-103. In re Estate of Hall, 328 F. Supp. 1305, 1971 U.S. Dist. LEXIS 13131 (1971), affirmed by 466 F.2d 340, 151 U.S. App. D.C. 169, 1972 U.S. App. LEXIS 8301 (1972).

Instruments which may be admitted to probate.

Document, which evidence showed was one page of three-page will and which disposed of 70% of testatrix' estate but contained incomplete sentence at bottom of final page was not part of longer, complete document which was duly executed by decedent and properly attested by witnesses so as to permit admission to probate of single page. D.C. Code § 18-103. In re Estate of Hall, 328 F. Supp. 1305, 1971 U.S. Dist. LEXIS 13131 (1971), affirmed by 466 F.2d 340, 151 U.S. App. D.C. 169, 1972 U.S. App. LEXIS 8301 (1972).

While ordinarily intention of a testatrix is entitled to great weight, intention cannot be considered where writing fails to comply with statutory requirements for a will. D.C. Code 1940, § 19-103. In re Lee's Estate, 80 F.Supp. 293, 1948 U.S. Dist. LEXIS 2079 (D.D.C1948).

Carbon copy of original will, despite handwritten notations and changes, some of which in minor respects differed from those on original, did not have efficacy separate and apart from original and carbon remained nothing more than a duplicate, a part of a set, drawn and executed at the same time and place and attested to by the same witnesses. D.C. Code §§ 18-103, 18-109, 20-331, 20-334. Estate of McKeever, 361 A.2d 166, 1976 D.C. App. LEXIS 339 (1976).

Presumptions and burden of proof.

Where subscribing witnesses at testator's request signed instrument in testator's handwriting which he announced was his will, the presumption of regularity, in absence of clear proof to the contrary, encompassed further presumption that testator had first signed will, though it was so folded that witnesses could not see his signature. D.C. Code 1940, § 19-103. Betts v. Lonas, 172 F.2d 759, 1948 U.S. App. LEXIS 2004 (C.A.D.C. 1948).

Burden of proving formal execution of will rests on party wishing to have document admitted to probate. D.C. Code § 18-103. In re Estate of Hall, 328 F. Supp. 1305, 1971 U.S. Dist. LEXIS 13131 (1971), affirmed by 466 F.2d 340, 151 U.S. App. D.C. 169, 1972 U.S. App. LEXIS 8301 (1972).

Where writing has been found in unsealed envelope, with portion missing, it would be inappropriate to use limited rule of circumstantial evidence to presume regularity in execution so as to permit admission of document to probate for full testamentary purposes. D.C. Code § 18-103. In re Estate of Hall, 328 F. Supp. 1305, 1971 U.S. Dist. LEXIS 13131 (1971), affirmed by 466 F.2d 340, 151 U.S. App. D.C. 169, 1972 U.S. App. LEXIS 8301 (1972).

Suspended attorney who only alleged that he had conversations regarding will that named him coexecutor did not state claim to establish lost or destroyed will, where he did not further allege facts to demonstrate will was duly executed, or facts to rebut presumption of revocation arising from disappearance of alleged will. D.C. Code 1981, § 18-103; Civil Rule 12(b)(6). In re Estate of Barfield, 736 A.2d 991, 1999 D.C. App. LEXIS 191 (1999).

Evidence that writer either signed document in presence of witnesses or that document was already signed when witnesses signed, but that writer specifically identified document to them as her will, was sufficient to support conclusion that document was executed properly under statute which governs requisites of execution of will. D.C. Code 1981, § 18-103. Davis v. Davis, 471 A.2d 1008, 1984 D.C. App. LEXIS 321 (1984).

When a will is traced into possession and custody of testator and is there found mutilated in one of the statutory modes, it will be presumed the testator destroyed or mutilated it animo revocandi. D.C. Code §§ 18-103, 18-109. Estate of McKeever, 361 A.2d 166, 1976 D.C. App. LEXIS 339 (1976).

Will contests.

Evidence in will contest did not warrant submission to jury of issue of lack of due execution of will. D.C. Code § 18-103. In re Estate of Weir, 475 F.2d 988, 1973 U.S. App. LEXIS 11259 (C.A.D.C. 1973).

§ 18-104. Devises, legacies, etc., to attesting witnesses.

(a) A beneficial devise, legacy, estate, interest, gift, or power of appointment of or affecting real or personal estate, given or made to an attesting witness to a will or codicil is void as to him and persons claiming under him, except as provided by subsections (b) and (c) of this section.

(b) Where an interested witness to a will or codicil, referred to in subsection

(a) of this section, would be entitled to a share of the estate of the testator in case the will or codicil were not established, he or persons claiming under him shall take such portion of the devise or bequest made to him in the will or codicil as does not exceed the share of the estate which would be distributed to him or persons claiming under him in case of intestacy.

(c) The voidance provided for by subsection (a) of this section does not apply to charges on real estate for the payment of debts.

(d) Notwithstanding subsection (a) of this section, an interested witness referred to therein, whether an heir at law or not, is not disqualified as a competent witness to the execution of the will or codicil by reason of his interest.

(Sept. 14, 1965, 79 Stat. 686, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 18-104. 1973 Ed., § 18-104.

CASE NOTES

Analysis

Construction and application.
Heirs at law as witnesses.
Number of witnesses.
Purposes.
Witness rendering services to estate.

Construction and application.

Statutes providing that legacies to persons who are witnesses to a will and testify to establish same are void, are not, unlike most portions of District of Columbia Code, acts of Congress passed for the government of the District, but are part of the law of the District because they are British statutes which were recognized as being in force in Maryland prior to cession of the District in 1801 and maintained in effect by act of Congress retaining all common law in force in Maryland. D.C. Code 1951, §§ 19-104, 19-105, 49-301. Manoukian v. Tomasian, 237 F.2d 211, 1956 U.S. App. LEXIS 2881 (C.A.D.C. 1956).

Heirs at law as witnesses.

Although by statutes legacies to persons who are witnesses to will and testify to establish same, are void, a witness-legatee who was also an heir at law could testify as to the execution of the will and take his bequest thereunder, but in an amount no greater than his intestate share. D.C. Code 1951, §§ 19-104, 19-105. Manoukian v. Tomasian, 237 F.2d 211, 1956 U.S. App. LEXIS 2881 (C.A.D.C. 1956).

Under District of Columbia law, testator's heirs at law or next of kin who are necessary witnesses to will can take legacies under will up to amount but not in excess of their intestate share if decedent had died intestate. D.C. Code§§ 18-103, 18-104, 18-104(a-c); Act Feb. 27, 1801, § 12, 2 Stat. 103. In re Estate of Pye, 325 F. Supp. 321, 1971 U.S. Dist. LEXIS 13624 (1971).

Number of witnesses.

Under District of Columbia law, where codicil was subscribed and attested to by three witnesses, two of whom were legally disinterested, bequest made in codicil to other witness was valid. D.C. Code §§ 18-103, 18-104, 18-104(a-c); Act Feb. 27, 1801, § 12, 2 Stat. 103. In re Estate of Pye, 325 F. Supp. 321, 1971 U.S. Dist. LEXIS 13624 (1971).

Under District of Columbia law, where codicil was subscribed and attested to by three witnesses and contained bequests to two of such witnesses, codicil was invalid with respect to such bequests. D.C. Code §§ 18-103, 18-104, 18-104(a-c); Act Feb. 27, 1801, § 12, 2 Stat. 103. In re Estate of Pye, 325 F. Supp. 321, 1971 U.S. Dist. LEXIS 13624 (1971).

Purposes.

Purpose of statute rendering void any devise to attesting witness of will containing devise was to give maximum effect to wills and to eliminate any financial incentive which might taint necessary objectivity of attesting witnesses. D.C. Code § 18-104(a). In re Estate of Small, 346 F. Supp. 600, 1972 U.S. Dist. LEXIS 13597 (1972).

Witness rendering services to estate.

Where attorney who drew will which nominated attorney as executor and authorized payment of ten percent for his services was attesting witness to will, attorney had "financial interest" which constituted a "beneficial interest" and fixed commission was void but court would allow fee for work performed. D.C. Code §§ 18-104(a), 20-1705, 20-1706. In re Estate of Small, 346 F. Supp. 600, 1972 U.S. Dist. LEXIS 13597 (1972).

§ 18-105. Retention or demand of void devise or legacy by attesting witness prohibited.

A person to whom a beneficial devise, legacy, estate, interest, gift, or power of appointment is given or made in a will or codicil, which is void under section 18-103, may not, in any manner or under any color or pretense whatsoever:

(1) demand or take possession of or receive any profits or benefit of or from the devise, legacy, estate, interest, gift, or power of appointment so given or made; or

(2) demand, receive, or accept from another person the beneficial devise, legacy, estate, interest, gift, or power of appointment or any satisfaction or compensation therefor.

(Sept. 14, 1965, 79 Stat. 686, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 18-105. 1973 Ed., § 18-105.

§ 18-106. Creditors as competent witnesses.

A mere charge in a will or codicil on the estate of a testator for the payment of debts does not disqualify a creditor from being a competent witness to the will or codicil.

(Sept. 14, 1965, 79 Stat. 686, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 18-106. 1973 Ed., § 18-106.

§ 18-107. Nuncupative wills.

A nuncupative will made after January 1, 1902, is not valid in the District of Columbia except that a person in actual military or naval service or a mariner at sea may dispose of his personal property by word of mouth, if:

(1) his oral disposition of the property is proved by at least two witnesses who were present at the making thereof and were requested by the testator to bear witness that the disposition was his last will; and

(2) the will is made during the time of the last illness of the deceased; and

(3) the substance of the will is reduced to writing within 10 days after it was made.

(Sept. 14, 1965, 79 Stat. 686, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 18-107. 1973 Ed., § 18-107.

CASE NOTES

Holographic wills.

District of Columbia statute requiring attestation in presence of testator by two witnesses is not subject to an exception for holographic wills. D.C. Code §§ 18-103, 18-107. In re Estate of Hall, 466 F.2d 340, 1972 U.S. App. LEXIS 8301 (C.A.D.C. 1972).

Purported beneficiary of one page holographic writing of decedent, which made a disposition to organization for care of disabled sailors and seamen of United States Navy and their families but which contained an incomplete sentence and did not effect a complete disposition of property, failed to sustain burden of showing due execution of the prescribed formalities since it was certain that one of the

purported witnesses did not see decedent sign her name or write anything on part of the paper offered and it was not certain that witness attested the original document on the last page thereof. D.C. Code §§ 18-103, 18-107. In re Estate of Hall, 466 F.2d 340, 1972 U.S. App. LEXIS 8301 (C.A.D.C. 1972).

§ 18-108. Execution of power by will.

An appointment made by will in the exercise of a power is not valid unless it is so executed that it would be valid for the disposition of the property to which the power applies if it belonged to the testator.

(Sept. 14, 1965, 79 Stat. 687, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 18-108. 1973 Ed., § 18-108.

§ 18-109. Revocation of wills; revival.

(a) A will or codicil, or a part thereof, may not be revoked, except by implication of law, otherwise than by

(1) a later will, codicil, or other writing declaring the revocation, executed as provided by section 18-103 or 18-107; or

(2) burning, tearing, cancelling, or obliterating the will or codicil, or the part thereof, with the intention of revoking it, by the testator himself, or by a person in his presence and by his express direction and consent.

(b) A will or codicil, or a part thereof, after it is revoked, may not be revived otherwise than by its re-execution, or by a codicil executed as provided in the case of wills, and then only to the extent to which an intention to revive is shown.

(Sept. 14, 1965, 79 Stat. 687, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 18-109. 1973 Ed., § 18-109.

Editor's notes. — Application of dower rights to husband and wife: Section 3 of the Act of September 14, 1965, provided: "Effective Mar. 15, 1962, all provisions of the Act entitled 'An Act to establish a code of law for the District of Columbia', approved Mar. 3, 1901, as amended, and all other laws in force in the District of Columbia, relating to the right of dower and its incidents, apply to both husband and wife'."

CASE NOTES

Analysis

Admissibility of evidence.
Codicils.
Construction and application.
Dependent relative revocation.
Destruction or mutilation of will.
Dissolution of marriage.
In general.
Intent.
Marriage and birth of issue.
Operation and effect of revocation.
Partial cancellation.
Presumptions and burden of proof.
Questions of law and fact.
Republication of will.
Revocation by implication of law.
Subsequent will.
Weight and sufficiency of evidence.

Admissibility of evidence.

In probate proceeding, testimony that, some months after tearing of will, testator had told witness that he had left his wife all his property and wanted his brothers to have nothing was relevant to issue whether tearing of will by testator and his widow was animo revocandi and its exclusion was prejudicial error. D.C. Code 1951, § 19-103. Savoy v. Savoy, 220 F.2d 364, 1954 U.S. App. LEXIS 3306 (C.A.D.C. 1954).

Codicils.

One codicil revokes another if such intent is

unmistakably clear. D.C. Code 1951, §§ 19-103, 19-108. Remon v. American Sec. & Trust Co., 288 F.2d 849, 1961 U.S. App. LEXIS 5258 (C.A.D.C. 1961).

Instrument designated as "a" codicil, adding bequest and reaffirming will, which named bank as executor and trustee, did not revoke prior codicil naming testator's wife and daughter as coexecutrices. D.C. Code 1951, §§ 19-103, 19-108. Remon v. American Sec. & Trust Co., 288 F.2d 849, 1961 U.S. App. LEXIS 5258 (C.A.D.C. 1961).

Testator's alleged revocation of properly executed codicil, which had revoked provisions of prior will, would not serve to revive the previously revoked provisions. Ward-Allen v. Gaskins (In re Estate of Creech), 989 A.2d 185, 2010 D.C. App. LEXIS 79 (2010).

Construction and application.

Where District of Columbia statutes, specifying with particularity the manner in which a will may be revoked and concluding with words "any former law or usage to the contrary notwithstanding," had been adopted from Maryland which had adopted the English statute of frauds which had been enacted in 1676, it was the "law or usage" prior to 1676 that was affected by those words. D.C. Code 1940, § 19-103. Pascucci v. Alsop, 147 F.2d 880, 1945 U.S. App. LEXIS 2207 (1945).

Dependent relative revocation.

Attempted revision of bequest of six thousand eight hundred dollars after execution and attestation of will by writing other numbers and numerals over the word "six" and corresponding but entirely obliterated numeral was ineffective to revoke or revise bequest and hence under doctrine of "dependent relative revocation," original bequest must prevail. D.C. Code 1940, § 19-103. In re Chaconas' Estate, 80 F.Supp. 549, 1948 U.S. Dist. LEXIS 2136 (D.D.C1948).

"Dependent relative revocation" of will means provisional or conditional revocation, such that if revocation is so closely or intimately connected with making of another will as to warrant inference that testator intended revocation of old will to depend upon efficacy of new disposition which he intended to substitute, the revocation fails and original will remains in force if will intended to be substituted is inoperative. D.C. Code, 1940, § 19-103. In re Smith's Estate, 77 F.Supp. 217, 1948 U.S. Dist. LEXIS 2644 (D.D.C1948).

The doctrine of "dependent relative revocation" ordinarily comes into play when later will is actually executed but is ineffective or inoperative from some defect in execution, mere intention to make a new will being insufficient, and such doctrine is inapplicable if there is clear intention to revoke former will. D.C. Code 1940, § 19-103. In re Smith's Estate, 77 F.Supp. 217, 1948 U.S. Dist. LEXIS 2644 (D.D.C1948).

Where second will, revoking first will, was cancelled by pencil marks across portions of will and attestation clause, without substituted will being prepared and without clear and convincing showing that testator had determined what disposition to make of property upon revocation, the doctrine of "dependent relative revocation" was inapplicable and second will must be deemed to have been revoked, without reinstating first will. D.C. Code, 1940, § 19-103. In re Smith's Estate, 77 F.Supp. 217, 1948 U.S. Dist. LEXIS 2644 (D.D.C1948).

Destruction or mutilation of will.

If tearing of a will is accidental or unaccompanied by necessary intent, it does not constitute revocation. D.C. Code 1951, § 19-103. Savoy v. Savoy, 220 F.2d 364, 1954 U.S. App. LEXIS 3306 (C.A.D.C. 1954).

Cross-marks through principal clauses of will or crisscross lines across face of document constitute "cancellation" whether made with ink or lead pencil. D.C. Code 1940, § 19-103. In re Smith's Estate, 77 F.Supp. 217, 1948 U.S. Dist. LEXIS 2644 (D.D.C1948).

Pencil cross-marks across entire first page of will and large parts of second and third page, and across individual words and attestation clause, constituted "cancellation" of will. D.C. Code 1940, § 19-103. In re Smith's Estate, 77 F.Supp. 217, 1948 U.S. Dist. LEXIS 2644 (D.D.C1948).

Where typed ribbon original of will was found in decedent's apartment with signature carefully torn and on which interlineations had been made and where decedent shortly prior to death had orally indicated to several persons that she was revoking her "old will" and had asked for and received new will forms which were found in her apartment, will was revoked by decedent with requisite intent and existence of carbon copy in decedent's safety deposit box would not operate in derogation of revocation. D.C. Code §§ 18-103, 18-109, 20-331, 20-334. Estate of McKeever, 361 A.2d 166, 1976 D.C. App. LEXIS 339 (1976).

Dissolution of marriage.

A divorce with property settlement revoked husband's will by implication of law. D.C. Code 1961, § 19-103. Luff v. Luff, 359 F.2d 235, 1966 U.S. App. LEXIS 7274 (C.A.D.C. 1966).

Fact question as to whether husband and wife had entered into property settlement agreement at time of their divorce precluded summary judgment in action to revoke wife's will by implication of law. D.C. Code 1981, § 18-109. Estate of Reap v. Malloy, 727 A.2d 326, 1999 D.C. App. LEXIS 75 (1999).

Fact that trial court did not distribute marital property of divorcing spouses did not conclusively establish that the spouses had settled their respective rights in each other's assets, so as to warrant revocation of wife's will by implication of law. D.C. Code 1981, §§ 16-910, 18-109. Estate of Reap v. Malloy, 727 A.2d 326, 1999 D.C. App. LEXIS 75 (1999).

Husband and wife's assertion in uncontested divorce proceeding that no property rights were to be adjudicated did not constitute an actual litigation of the issue of the spouses' respective rights in each other's assets, so as to collaterally estop husband from asserting, in subsequent action to revoke wife's will by implication of law, that the spouses had not settled their respective rights in each other's assets at the time of the divorce. D.C. Code 1981, § 18-109. Estate of Reap v. Malloy, 727 A.2d 326, 1999 D.C. App. LEXIS 75 (1999).

Revocation of will by implication of law, based on a testator's divorce, is complete in that it applies to all of the beneficiaries, not just the former spouse; the testator's estate passes as if he died intestate. D.C. Code 1981, § 18-109. Estate of Reap v. Malloy, 727 A.2d 326, 1999 D.C. App. LEXIS 75 (1999).

A mutual understanding of divorcing spouses not to distribute their respective property rights is not a final settlement of their respective rights in each other's assets, as required to revoke a will by implication of law. D.C. Code 1981, § 18-109. Estate of Reap v. Malloy, 727 A.2d 326, 1999 D.C. App. LEXIS 75 (1999).

Divorce alone of the testator or testatrix is not enough to cause revocation of the will by implication; rather, the spouses must have settled their respective rights in each other's assets, and thus the divorce must be accompanied either by a formally agreed property settlement between the spouses or by a division of their property rights by the court. D.C. Code 1981, § 18-109. Estate of Reap v. Malloy, 727 A.2d 326, 1999 D.C. App. LEXIS 75 (1999).

The District of Columbia Court of Appeals declined to extend application of doctrine of revocation by implication, which holds that divorce automatically revokes any existing will's bequest to former spouse regardless of testator's actual intent, to revoke husband's beneficiary designation in his life insurance policy naming his former wife as the beneficiary where he had redesignated his former wife as the life insurance beneficiary on the same day judgment of absolute divorce had been entered. Bolle v. Hume, 619 A.2d 1192, 1993 D.C. App. LEXIS 33 (1993).

Doctrine of implied revocation of will applies there has been divorce and division of property by court. D.C. Code 1973, § 18-109. Estate of Liles, 435 A.2d 379, 1981 D.C. App. LEXIS 355 (1981).

In general.

Copies of former wills, whether executed or unexecuted, must be made available to court under threat of criminal penalty. D.C. Code §§ 18-109, 18-111, 18-112, 22-1405. Doherty v. Fairall, 413 F.2d 381, 1969 U.S. App. LEXIS 12839 (C.A.D.C. 1969).

Where doctrine of dependent relevant revocation is applicable, statute relating to revival of wills after revocation is inapplicable. D.C. Code 1940, § 19-108. In re Nutting's Estate, 82 F.Supp. 689, 1949 U.S. Dist. LEXIS 3075 (D.D.C1949).

A prior will, once revoked, may not be revived, unless it has been re-executed or a codicil is executed in accordance with other statutory provisions. Ward-Allen v. Gaskins (In re Estate of Creech), 989 A.2d 185, 2010 D.C. App. LEXIS 79 (2010).

Carbon copy of original will, despite handwritten notations and changes, some of which in minor respects differed from those on original, did not have efficacy separate and apart from original and carbon remained nothing more than a duplicate, a part of a set, drawn and executed at the same time and place and attested to by the same witnesses. D.C. Code §§ 18-103, 18-109, 20-331, 20-334. Estate of McKeever, 361 A.2d 166, 1976 D.C. App. LEXIS 339 (1976).

Intent.

Act of revocation and intent to revoke are necessary to revoke will. D.C. Code 1940, § 19-103. In re Smith's Estate, 77 F.Supp. 217, 1948 U.S. Dist. LEXIS 2644 (D.D.C1948).

Marriage and birth of issue.

Where testator was unmarried and without children by a former marriage at time he executed will which contained no provision for any child of subsequent marriage, his subsequent marriage and the birth of a child amounted to an implied revocation of the previously executed will, notwithstanding statute of District of Columbia specifying with particularity the manner in which will may be revoked. D.C. Code 1940, § 19-103. Pascucci v. Alsop, 147 F.2d 880, 1945 U.S. App. LEXIS 2207 (1945).

Birth of child to testator, even out of wedlock, revoked will by implication of law, such that estate was treated as if decedent died intestate, where decedent executed will before birth of any child, and will did not disclose an intent to disinherit any after-born child. In re Estate of Douglas Allen Johnson, 134 WLR 1703 (Super. Ct. 2006).

Operation and effect of revocation.

Pages one, two, and five of five page will were not admissible after court revoked pages three and four as improper substitutions. In re Estate of Weston, 833 A.2d 490, 2003 D.C. App. LEXIS 689 (2003).

Revocation by testator of one will in a set also operates to revoke all others in the set. D.C.

Code §§ 18-103, 18-109. Estate of McKeever, 361 A.2d 166, 1976 D.C. App. LEXIS 339 (1976).

Decedent's revocation of original will in her possession also revoked executed carbon copy of same will in her safe deposit box. D.C. Code §§ 18-103, 18-109. Estate of McKeever, 361 A.2d 166, 1976 D.C. App. LEXIS 339 (1976).

Partial cancellation.

Statutes similar to those of the District of Columbia authorize revocation of a portion of will by cancellation of a portion upon the face of the will by testator with intent to revoke such portion, leaving the remainder of the will unaffected, if such remainder standing alone is an understandable testamentary expression of the testator. D.C. Code 1940, § 19-103. Wolfe v. Snyder, 48 F.Supp. 227, 1942 U.S. Dist. LEXIS 2042 (D.D.C1942).

Partial cancellation of will should be regarded as a final act of "revocation" by the testator in the absence of evidence that the act of cancellation was merely a deliberative act performed with the intention of later executing a codicil or a new will. D.C. Code 1940, § 19-103. Wolfe v. Snyder, 48 F.Supp. 227, 1942 U.S. Dist. LEXIS 2042 (D.D.C1942).

Doctrine of partial invalidity would be applied to uphold portion of testator's will leaving one-half of the residue of his estate to his grandniece, while striking portions of testator's will naming the husband of testator's deceased niece as the personal representative, stating that the husband of the deceased niece would share in the residue and stating that testator's grandnephew was a contingent beneficiary, where testator loved and treated his grandniece as a granddaughter, grandniece was a contingent beneficiary in testator's prior will, portion of the will that left one-half of the residue to grandniece was read to testator before he signed it, and grandniece played no role in her father's fraud and undue influence in obtaining testator's signature to the will. In re Estate of Turpin, 19 A.3d 801, 2011 D.C. App. LEXIS 245 (2011).

Presumptions and burden of proof.

Marks amounting to cancellation on face of will are presumed to have been placed on document with intent to revoke. D.C. Code 1940, § 19-103. In re Smith's Estate, 77 F.Supp. 217, 1948 U.S. Dist. LEXIS 2644 (D.D.C1948).

Revocation of will by implication of law does not just entail a presumption that may be rebutted, but rather, is conclusive. D.C. Code 1981, § 18-109. Estate of Reap v. Malloy, 727 A.2d 326, 1999 D.C. App. LEXIS 75 (1999).

When a will is traced into possession and custody of testator and is there found mutilated in one of the statutory modes, it will be presumed the testator destroyed or mutilated it animo revocandi. D.C. Code §§ 18-103, 18-109. Estate of McKeever, 361 A.2d 166, 1976 D.C. App. LEXIS 339 (1976).

Questions of law and fact.

In probate proceeding in which widow offered torn will for probate where she testified that she and testator had torn will during argument, if jury found the tearing so occurred, they had to determine whether or not the tearing was animo revocandi. D.C. Code 1951, § 19-103. Savoy v. Savoy, 220 F.2d 364, 1954 U.S. App. LEXIS 3306 (C.A.D.C. 1954).

Republication of will.

Republication merely ratifies will as modified by codicils, and instruments are read together as expressing single act. D.C. Code 1951, §§ 19-103, 19-108. Remon v. American Sec. & Trust Co., 288 F.2d 849, 1961 U.S. App. LEXIS 5258 (C.A.D.C. 1961).

Revocation by implication of law.

Notwithstanding statutory provisions for express revocation of will, will may be revoked by implication of law, and not merely under circumstances recognized at early common law but upon grounds bringing situation within rationale of common-law doctrine as result of historical changes. D.C. Code 1961, § 19-103. Luff v. Luff, 359 F.2d 235, 1966 U.S. App. LEXIS 7274 (C.A.D.C. 1966).

Doctrine allowing will to be revoked by implication of law applies when there has been a change in the condition and circumstances of the parties significant enough to impute to the testatrix an intent to repudiate. D.C. Code 1981, § 18-109. Estate of Reap v. Malloy, 727 A.2d 326, 1999 D.C. App. LEXIS 75 (1999).

Subsequent will.

Where cancellation or destruction of will is connected with the making of another will so as fairly to raise the inference that testator meant revocation of old will to depend upon the efficacy of the new disposition, if the will intended to be substituted is inoperative from defect of attestation or any other cause, the revocation fails and the original will remains in force. D.C. Code 1940, § 19-103. Wolfe v. Snyder, 48 F.Supp. 227, 1942 U.S. Dist. LEXIS 2042 (D.D.C1942).

Execution of subsequent will effected revocation of a prior will, which could not be revived merely by testator's revocation of subsequent will. D.C. Code 1981, § 18-109. In re Estate of Burleson, 738 A.2d 1199, 1999 D.C. App. LEXIS 207 (1999).

A prior will may be revoked upon the execution of a subsequent will, and may not be revived unless the prior will has been re-executed or a codicil was properly executed. D.C. Code 1981, § 18-109. In re Estate of Burleson,

738 A.2d 1199, 1999 D.C. App. LEXIS 207 (1999).

Weight and sufficiency of evidence.

In the absence of other evidence of intent of testatrix in making various cancellations in her own handwriting on the face of original will, unwitnessed holographic writing found after death in writing desk drawer with original will constituted persuasive "evidence" that cancellations on original will were conditional and were dependent upon the consummation of an effective revised testamentary disposition along the lines of uncompleted suggestions in holographic writing. D.C. Code 1940, § 19-103. Wolfe v. Snyder, 48 F.Supp. 227, 1942 U.S. Dist. LEXIS 2042 (D.D.C1942).

Evidence established that cancellations in testatrix' handwriting on the face of original will were "conditional revocations" dependent upon consummation of an effective revised testamentary disposition in accordance with suggestions in unwitnessed holographic writing found in writing desk drawer with original will, and no such revised disposition having been consummated, the cancellations were ineffective leaving the original will in force. D.C. Code 1940, § 19-103. Wolfe v. Snyder, 48 F.Supp. 227, 1942 U.S. Dist. LEXIS 2042 (D.D.C1942).

§ 18-110. Opening will before delivery to Probate Court.

A person having possession or custody of a testamentary instrument may, after the death of the testator, open and read it in the presence of near relatives of the deceased, who may conveniently have notice thereof, and of other persons, and immediately thereafter may deliver the will or codicil to the Probate Court or the Register of Wills, until proceedings may be held for the purpose of proving it or other action is taken thereon.

(Sept. 14, 1965, 79 Stat. 687, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 18-110. 1973 Ed., § 18-110.

§ 18-111. Withholding will.

Whoever, having possession of a testamentary instrument, willfully neglects, for the period of 90 days after the death of the testator becomes known to him, to deliver it to the Probate Court, or to the Register of Wills, or to an executor named in the instrument, shall be fined not more than $500.

(Sept. 14, 1965, 79 Stat. 687, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 18-111. 1973 Ed., § 18-111.

CASE NOTES

ANALYSIS

Attorney discipline.
Duty to produce and offer will for probate.

Attorney discipline.

Failure to follow client's instructions to file will and initiate probate proceedings, to deposit funds in trust account for payment of certain expenses and to pay those expenses amounts to neglect, but not intentional failure to pursue client's objectives or intentional failure to carry out contract of employment, even though attorney claims engagement in another matter. Code of Prof.Resp., DR 6-101(A)(3), DR 7-101(A)(1, 2). In re Lenoir, 585 A.2d 771, 1991 D.C. App. LEXIS 14 (1991).

Duty to produce and offer will for probate.

Copies of former wills, whether executed or unexecuted, must be made available to court under threat of criminal penalty. D.C. Code §§ 18-109, 18-111, 18-112, 22-1405. Doherty v. Fairall, 413 F.2d 381, 1969 U.S. App. LEXIS 12839 (C.A.D.C. 1969).

§ 18-112. Taking and carrying away, or destroying, mutilating, or secreting will.

Whoever, during the life or after the death of the testator, for a fraudulent purpose, takes and carries away, or destroys, mutilates, or secretes, a testamentary instrument, shall be imprisoned not more than five years.

(Sept. 14, 1965, 79 Stat. 687, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 18-112. 1973 Ed., § 18-112.

CASE NOTES

Duty to produce and offer will for probate. Copies of former wills, whether executed or unexecuted, must be made available to court under threat of criminal penalty. D.C. Code §§ 18-109, 18-111, 18-112, 22-1405. Doherty v. Fairall, 413 F.2d 381, 1969 U.S. App. LEXIS 12839 (C.A.D.C. 1969).

CHAPTER 3. DEVISES AND BEQUESTS.

Sec.
18-301. Estates disposable by will.
18-302. [Repealed].
18-303. General devise and bequest of all property.
18-304. Devise of land to include leaseholds.
18-305. After-acquired real property.
18-306. "Pour over" trusts.
18-307. Advancement as satisfaction of devise or bequest.
18-308. Death of devisee or legatee; lapsed or void devises or bequests.

§ 18-301. Estates disposable by will.

The real and personal estate of a person, which may pass by deed or gift, or which would, in case of the owner's dying intestate, descend to or devolve upon his heirs or other legal representatives, may be disposed of, transferred, and passed by his last will, testament, or codicil in accordance with this part.

(Sept. 14, 1965, 79 Stat. 687, Pub. L. 89-183, § 1.)

Cross references. — Creation of estates in land, powers, see §§ 42-1001 et seq., 42-501 et seq.

Devise to spouse in lieu of dower, see § 19-112.

Election of spouse in lieu of will provisions, see §§ 19-113, 19-114.

Prior Codifications. — 1981 Ed., § 18-301. 1973 Ed., § 18-301.

References in text. — "This part," referred to in this section, is Division III of the D.C. Official Code, Decedents' Estates and Fiduciary Relations.

§ 18-302. Devises or bequests for religious purposes. [Repealed].

Repealed.

(June 24, 1980, D.C. Law 3-72, § 203(b), 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 18-302.

Legislative history of Law 3-72. — Law 3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

§ 18-303. General devise and bequest of all property.

A devise and bequest purporting to be of all real or personal property, or both, belonging to the testator, includes also all property of either or both kinds, respectively, over which he has a general power of appointment, unless a contrary intention appears in the testamentary instrument containing the devise or bequest.

(Sept. 14, 1965, 79 Stat. 688, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 18-303. 1973 Ed., § 18-303.

§ 18-304. Devise of land to include leaseholds.

A devise of the land of a testator, or of his land in any place, or in the

occupation of a person named or otherwise described in a general manner, includes his leasehold estates or those to which the descriptions extend, as well as freehold estates, unless a contrary intention appears in the testamentary instrument containing the devise.

(Sept. 14, 1965, 79 Stat. 688, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 18-304. 1973 Ed., § 18-304.

§ 18-305. After-acquired real property.

(a) A will executed after January 17, 1887, and before January 1, 1902, devising real property, from which it appears that it was the intention of the testator to devise property acquired after the execution of the will, operates as a valid devise of all after-acquired real property.

(b) A will executed after January 1, 1902, which by words of general import devises all the estate or all the property of the testator, operates as a valid devise of real property acquired by the testator after the execution of the will, unless it appears therefrom that it was not the intention of the testator to devise the after-acquired real property.

(Sept. 14, 1965, 79 Stat. 688, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 18-305. 1973 Ed., § 18-305.

§ 18-306. "Pour over" trusts.

(a) *Bequests or Devises to Trustee Under, or in Accordance With Terms of, Existing Trusts.* — A devise or bequest may be made in a will or codicil, otherwise valid, in form or substance to the trustees under, or in accordance with the terms of, a written inter vivos trust, including an unfunded life insurance trust, although the settlor has reserved rights of ownership in the insurance contracts, which has been executed and is in existence prior to or contemporaneously with the execution of the will or codicil and is identified in the will or codicil, without regard to the size or character of the corpus of the trust, or whether the settlor is the testator or a third person.

The devise or bequest is not invalid because the trust is subject to amendment or modification or may be terminated or revoked after the will or codicil is executed, whether by the settlor or any other person or persons, nor because the trust instrument or an amendment thereto was not executed in the manner required by law for wills or codicils.

Unless the will or codicil otherwise provides:

(1) the devise or bequest is not invalid because the trust was amended or modified after the will or codicil was executed, and the devise or bequest shall be given effect in accordance with the terms of the trust as they appear in writing on the date of death of the testator, including any amendment or modification;

(2) property passing under the devise or bequest passes directly to the trustees of the inter vivos trust and becomes a part of the assets of the trust, and is not deemed to be held under a separate testamentary trust;

(3) an entire revocation of the trust prior to the death of the testator invalidates the devise or bequest even though the revocation was not effected in the manner provided by law for the revocation of wills and codicils;

(4) a termination of the trust, except by way of revocation, in accordance with the terms of the trust or by its exhaustion or by operation of law or otherwise does not invalidate the devise or bequest.

(b) *Bequests or Devises to Trustee Under, or in Accordance With Terms of, Testamentary Trusts.* — A devise or bequest may be made in a will or codicil, otherwise valid, in form of substance to the trustees under, or in accordance with the terms of, a testamentary trust established under another valid will or codicil. The devise or bequest is not invalid because the testamentary trust or the will or codicil establishing the testamentary trust was not in existence when the will or codicil containing the devise or bequest was executed, if the testator of the will or codicil establishing the testamentary trust predeceases the testator of the will or codicil containing the devise or bequest, and the will or codicil establishing the testamentary trust is admitted to probate.

Unless the will otherwise provides:

(1) property passing under the devise or bequest is deemed to pass directly to the trustees of the testamentary trust and becomes a part of the assets of the trust, and is not deemed to be held under a separate testamentary trust;

(2) a termination of the trust in accordance with the terms of the trust or by its exhaustion or by operation of law or otherwise does not invalidate the devise or bequest.

(c) This section applies to a devise or bequest made by a testator living on December 5, 1963, or born subsequent thereto, without regard to the date of execution of the will or codicil containing the devise or bequest or of the trust instrument, or an amendment thereto.

(d) This section does not affect the validity, as existing before December 5, 1963, of:

(1) a devise or bequest made by a testator who died prior to December 5, 1963; or

(2) a devise or bequest which does not come within this section.

(Sept. 14, 1965, 78 Stat. 688, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 18-306. 1973 Ed., § 18-306.

Editor's notes. — Uniform Law: This section is based upon § 1 of the Uniform Testamentary Additions to Trusts Act (1960 Act).

CASE NOTES

In general.

Legatees under will had standing to raise objections to, and seek redress for, actions or inactions by personal representatives, as to inter vivos pour-over trust, that diminished size of property interests passing to legatees through probate estate. D.C. Code 1981, § 20-743. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Pour-over trust provision terminating inter vivos trust upon settlor's death and paying assets over to personal representatives of settlor's estate to be distributed in accordance with settlor's will established new fiduciary relationship between personal representatives and legatees under will, independent of relationship between trust and settlor's personal representatives. Rearden v. Riggs Nat'l Bank, 677 A.2d

1032, 1996 D.C. App. LEXIS 113 (1996).

Personal representative that takes property from pour-over trust, pursuant to trust document that provides for final accounting to personal representative, occupies position analogous to successor trustee, and is obligated to pursue any claim for breach of trust committed by predecessor of which it has knowledge, on behalf of probate estate. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Residual legatees under will, whose potential property interests in inter vivos trust flowed from trust's pour-over provision directing the payment of assets to personal representatives of settlor's estate upon settlor's death to be distributed under will, could not proceed directly against trustees for alleged misconduct, as if beneficiary of trust; rather, legatees were required to first seek relief against personal representatives of estate, with whom they had fiduciary relationship, in probate court, for failing to pursue claims of trustee misconduct. D.C. Code 1981, §§ 20-101(d)(1)(C), 20-743. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Under normal circumstances personal representatives, not legatees, would assert interests of estate against pour-over trustees. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

§ 18-307. Advancement as satisfaction of devise or bequest.

An advancement or a provision for an advancement to a person is a satisfaction, in whole or in part, of a devise or bequest to that person contained in a previous will if it would be so deemed in case the devisee or legatee were the child of the testator; and, whether he is a child or not, it shall be so deemed where it appears from parol or other evidence to be so intended.

(Sept. 14, 1965, 79 Stat. 689, Pub. L. 89-183, § 1.)

Cross references. — Advancements to child or descendant, see § 19-319.

Prior Codifications. — 1981 Ed., § 18-307. 1973 Ed., § 18-307.

§ 18-308. Death of devisee or legatee; lapsed or void devises or bequests.

Unless a different disposition is made or required by the will, if a devisee or legatee dies before the testator, leaving issue who survive the testator, the issue shall take the estate devised or bequeathed as the devisee or legatee would have done if he had survived the testator. Unless a contrary intention appears by the will, the property comprised in a devise or bequest in a will that fails or is void or is otherwise incapable of taking effect, shall be deemed included in the residuary devise or bequest, if any, contained in the will.

(Sept. 14, 1965, 79 Stat. 689, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 18-308. 1973 Ed., § 18-308.

CASE NOTES

ANALYSIS

Construction and application.
Evidence.
Intent of testator.
Specific contingent provisions of will.

Construction and application.

Antilapse statute is to be interpreted liberally with view to attainment of its beneficent objectives and, to render statute inoperative, a purpose inconsistent with that objective must fairly appear and from terms of will itself but, where will reflects a countervailing intention with reasonable clarity, statute does not save gift from lapse. D.C. Code § 18-308. In re Estate of Kerr, 433 F.2d 479, 1970 U.S. App.

LEXIS 10725 (C.A.D.C. 1970).

District of Columbia antilapse statute applies to gifts of residuum as well as to other devises and bequests contained in will. D.C. Code § 18-308. In re Estate of Kerr, 433 F.2d 479, 1970 U.S. App. LEXIS 10725 (C.A.D.C. 1970).

A sum bequeathed by will to testator's deceased brother's widow, who predeceased testator, goes to her issue on his death. D.C. Code 1940, § 19-110. Second Nat. Bank of Washington v. Spinks, 122 F.Supp. 153, 1953 U.S. Dist. LEXIS 2029 (D.D.C1953).

Antilapse statute applies to gifts in residuary clauses. D.C. Code § 18-308. Starkey v. District of Columbia, 377 A.2d 382, 1977 D.C. App. LEXIS 362 (1977).

Antilapse statute does not apply when vesting of a gift is conditioned on surviving the testator. D.C. Code § 18-308. Starkey v. District of Columbia, 377 A.2d 382, 1977 D.C. App. LEXIS 362 (1977).

District of Columbia's antilapse statute did not work to transfer lapsed share of residual legatee who predeceased testator to the remaining two residual legatees. D.C. Code § 18-308. Starkey v. District of Columbia, 377 A.2d 382, 1977 D.C. App. LEXIS 362 (1977).

Evidence.

Rules of construction against interpretation resulting in intestacy or escheat were not dispositive before extrinsic evidence was taken to show testator's intent. District of Columbia v. Estate of Parsons, 590 A.2d 133, 1991 D.C. App. LEXIS 91 (1991).

Intent of testator.

Testorial intention is important under District of Columbia antilapse statute which may operate to avoid a lapse unless different disposition is made or required by the will. D.C. Code § 18-308. In re Estate of Kerr, 433 F.2d 479, 1970 U.S. App. LEXIS 10725 (C.A.D.C. 1970).

Countervailing intention that testamentary gift should lapse is manifested where will articulates gift in words effectively conditioning its efficacy on beneficiary's survival of testator, and antilapse legislation has no application to gifts limited to vest on beneficiary's survival of testator and not otherwise, whether gift is to single or to multiple beneficiaries and whether there is or is not a limitation over to another on death of primary beneficiary during lifetime of testator. D.C. Code § 18-308. In re Estate of Kerr, 433 F.2d 479, 1970 U.S. App. LEXIS 10725 (C.A.D.C. 1970).

Words referable to survivorship do not necessarily condition a testamentary gift and construction properly to be placed on survivorship language is a product of testorial intention. D.C. Code § 18-308. In re Estate of Kerr, 433 F.2d 479, 1970 U.S. App. LEXIS 10725 (C.A.D.C. 1970).

Provision of will specifying that residuum was to be divided equally between two named beneficiaries if they were both living at time of testatrix' demise and alternatively, if one predeceased testatrix, then all of estate was to go to one remaining expressed intent contrary to antilapse statute and death of both beneficiaries during testatrix' lifetime caused residuary clause to lapse. D.C. Code § 18-308. In re Estate of Kerr, 433 F.2d 479, 1970 U.S. App. LEXIS 10725 (C.A.D.C. 1970).

Specific contingent provisions of will.

Where will bequeathed to niece all household furniture, jewelry and other personal property, except cash, and bequeathed to brother all the rest, residue and remainder of estate except that if brother should predecease testatrix or for any other reason could not personally take residue, then it was to go to niece, testatrix' vested remainder in estate subject to life estate, passed to brother who survived testatrix but who along with niece, predeceased life tenant. D.C. Code 1951, §§ 19-110, 45-812. Bank of Galesburg v. Lawrenson, 240 F.2d 31, 1956 U.S. App. LEXIS 4260 (C.A.D.C. 1956).

Under will devising half of residuary estate to testatrix' sister who predeceased testatrix, that portion of residue went to sister's children rather than to the heirs of the testatrix. D.C. Code 1940, § 19-110. Mitchell v. Merriam, 188 F.2d 42, 1951 U.S. App. LEXIS 2962 (C.A.D.C. 1951).

Where testatrix bequeathed a stated sum to a named person with request that he invest and reinvest the fund and care for family graves, and legatee predeceased testatrix, and will contained a residuary clause directing that balance of estate held in trust including all legacies should go to four named institutions upon lapse of any legacy, bequest to the predeceased legatee might be held either as a charitable trust or pass to ultimate residuary legatees, but in no event did next of kin have an interest therein. D.C. Code 1940, § 19-110. Bunker v. Jones, 181 F.2d 619, 1950 U.S. App. LEXIS 2667 (C.A.D.C. 1950).

Under will containing words of bequest to named sister and niece, share and share alike, without specifying any property, with direction that at sister's death, her share should go to named daughter, bequeathing $5 to named sister's incompetent son and other relatives, and bequeathing residuary estate to named sister and niece, share and share alike, predeceased sister's named daughter was entitled to mother's share of residuary estate to exclusion of incompetent brother. D.C. Code 1940, § 19-110. Pace v. Bradley, 171 F.2d 350, 1948 U.S. App. LEXIS 2846 (C.A.D.C. 1948).

Testamentary provision for issue of beneficiary for life of testamentary trust to take the balance of trust fund was a "different disposition made or required by will" within meaning of anti-lapse statute, and hence where beneficiary for life predeceased testatrix his issue took the trust fund outright. D.C. Code 1940, § 19-110. Wolfe v. Snyder, 48 F.Supp. 227, 1942 U.S. Dist. LEXIS 2042 (D.D.C1942).

CHAPTER 5. PROBATE OF WILLS. [REPEALED].

Sec.
18-501 to 18-514. [Repealed].

§§ 18-501 to 18-514. Notice of petition for probate; notice to nonresidents and unfound residents; notice to unknown kin or heirs at law; probate; waiver of notice; proof of execution; proof of wills; testimony; witnesses outside District; appearance of persons not cited; admission to probate; caveat; will not to be probated while issues pending; caveat; time for filing; prior will not to be probated pending issues; guardian ad litem; plenary proceedings; rules of procedure; wills filed prior to June 8, 1898, may be probated as of real estate. [Repealed].

Repealed.

(June 24, 1980, D.C. Law 3-72, § 203c, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., §§ 18-501 to 18-514.

CHAPTER 7. INTERNATIONAL WILL; INFORMATION REGISTRATION.

Sec.
18-701. Definitions.
18-702. International will; validity.
18-703. International will; requirements.
18-704. International will; other points of form.
18-705. International will; certificate.
18-706. International will; effect of certificate.
18-707. International will; revocation.
18-708. Source and construction.
18-709. Persons authorized to act in relation to international will; eligibility; recognition by authorizing agency.
18-710. International will information registration.

§ 18-701. Definitions.

For the purposes of this chapter, the term:

(1) "Authorized person" or "person authorized to act in connection with international wills" means a person who by section 18-709, or by the laws of the United States, including members of the diplomatic and consular service of the United States designated by Foreign Service Regulations, is empowered to supervise the execution of international wills.

(2) "International will" means a will executed in conformity with sections 18-702 through 18-705.

(Apr. 27, 2001, D.C. Law 13-292, § 102(b), 48 DCR 2087.)

Legislative history of Law 13-292. — Law 13-292, the "Omnibus Trusts and Estates Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-298, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 26, 2001, it was assigned Act No. 13-599 and transmitted to both Houses of Congress for its review. D.C. Law 13-292 became effective on April 27, 2001.

§ 18-702. International will; validity.

(a) A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets, and of the nationality, domicile, or residence of the testator, if it is made in the form of an international will complying with the requirements of this chapter.

(b) The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

(c) This chapter shall not apply to the form of testamentary dispositions made by 2 or more persons in one instrument.

(Apr. 27, 2001, D.C. Law 13-292, § 102(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 18-701.

§ 18-703. International will; requirements.

(a) The will shall be made in writing. It need not be written by the testator himself or herself. It may be written in any language, by hand, or by any other means.

(b) The testator shall declare in the presence of 2 witnesses and of a person authorized to act in connection with international wills that the document is

his or her will and that he or she knows the contents thereof. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

(c) In the presence of the witnesses, and of the authorized person, the testator shall sign the will or, if he or she has previously signed it, shall acknowledge his or her signature.

(d) When the testator is unable to sign, the absence of his or her signature does not affect the validity of the international will if the testator indicates the reason for his or her inability to sign and the authorized person makes note thereof on the will. In these cases, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the testator's name for him or her, if the authorized person makes note of this also on the will, but it is not required that any person sign the testator's name for him or her.

(e) The witnesses and the authorized person shall then and there attest the will by signing in the presence of the testator.

(Apr. 27, 2001, D.C. Law 13-292, § 102(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 18-701.

§ 18-704. International will; other points of form.

(a) The signatures shall be placed at the end of the will. If the will consists of several sheets, each sheet shall be signed by the testator or, if he or she is unable to sign, by the person signing on his or her behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

(b) The date of the will shall be the date of its signature by the authorized person. That date shall be noted at the end of the will by the authorized person.

(c) The authorized person shall ask the testator whether he or she wishes to make a declaration concerning the safekeeping of his or her will. If so, and at the express request of the testator, the place where he or she intends to have his or her will kept shall be mentioned in the certificate provided for in section 18-705.

(d) A will executed in compliance with section 18-703 shall not be invalid merely because it does not comply with this section.

(Apr. 27, 2001, D.C. Law 13-292, § 102(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 18-701.

§ 18-705. International will; certificate.

The authorized person shall attach to the will a certificate, to be signed by him or her, establishing that the requirements of this chapter for valid execution of an international will have been complied with. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate shall be substantially in the following form:

"CERTIFICATE

"(Convention of October 26, 1973)

"1. I, _____ _____ (name, address and capacity), a person authorized to act in connection with international wills

"2. Certify that on _____ _____ (date) at _____ _____ (place)

"3. (testator) _____ _____

"(name, address, date and place of birth) in my presence and that of the witnesses

"4. (a) _____ _____ (name, address, date and place of birth)

"(b) _____ _____ (name, address, date and place of birth)

"has declared that the attached document is his or her will and that he knows the contents thereof.

"5. I furthermore certify that:

"6. (a) in my presence and in that of the witnesses

"(1) the testator has signed the will or has acknowledged his signature previously affixed.

"(2) [to be completed if appropriate] following a declaration of the testator stating that he or she was unable to sign his will for the following reason _____ _____, I have mentioned this declaration on the will and the signature has been affixed by _____ _____ (name and address)

"7. (b) the witnesses and I have signed the will;

"8. (c) [to be completed if appropriate] each page of the will has been signed by _____ _____ and numbered;

"9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

"10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

"11. (f) [to be completed if appropriate] the testator has requested me to include the following statement concerning the safekeeping of his will:

"12. PLACE OF EXECUTION

"13. DATE

"14. SIGNATURE and, if necessary, SEAL."

(Apr. 27, 2001, D.C. Law 13-292, § 102(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 18-701.

§ 18-706. International will; effect of certificate.

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under this chapter. The absence or irregularity of a certificate shall not affect the formal validity of a will under this chapter.

(Apr. 27, 2001, D.C. Law 13-292, § 102(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 18-701.

§ 18-707. International will; revocation.

The international will shall be subject to the ordinary rules of revocation of wills.

(Apr. 27, 2001, D.C. Law 13-292, § 102(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 18-701.

§ 18-708. Source and construction.

Sections 18-701 through 18-707 derive from Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying this chapter, regard shall be had to its international origin and to the need for uniformity in its interpretation.

(Apr. 27, 2001, D.C. Law 13-292, § 102(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 18-701.

§ 18-709. Persons authorized to act in relation to international will; eligibility; recognition by authorizing agency.

Individuals who have been admitted to practice law before the courts of the District of Columbia and who are in good standing as active law practitioners in the District, are hereby declared to be authorized persons in relation to international wills.

(Apr. 27, 2001, D.C. Law 13-292, § 102(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 18-701.

§ 18-710. International will information registration.

The Mayor of the District of Columbia shall establish a registry system by which authorized persons may register in a central information center, information regarding the execution of international wills, keeping that information in strictest confidence until the death of the maker and then making it available to any person desiring information about any will who presents a death certificate or other satisfactory evidence of the testator's death to the center. Information that may be received, preserved in confidence until death, and reported as indicated is limited to the name, social security or any other individual-identifying number established by law, address, and date and place of birth of the testator, and the intended place of deposit or safekeeping of the instrument pending the death of the maker. The Mayor, at the request of the authorized person, may cause the information the Mayor receives about execution of any international will to be transmitted to the registry system of another jurisdiction, as identified by the testator, if that

other system adheres to rules protecting the confidentiality of the information similar to those established in the District of Columbia.

(Apr. 27, 2001, D.C. Law 13-292, § 102(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 18-701.

TITLE 19. DESCENT, DISTRIBUTION, AND TRUSTS.

Chapter
1. Rights of Surviving Spouse or Domestic Partner, and Children.
3. Intestates' Estates.
5. Simultaneous Deaths; Uniform Law.
6. Nonprobate Transfers on Death; Uniform Law.
7. Escheat.
9. Statutory Rule Against Perpetuities; Uniform Law.
10. [Reserved].
11. Custodial Trusts; Uniform Law.
12. [Reserved].
13. Uniform Trust Code.
15. Uniform Disclaimer of Property Interests.

Chapter 1. Rights of Surviving Spouse or Domestic Partner, and Children.

Sec.
19-101. [Repealed].
19-101.01. Applicable law.
19-101.02. Homestead allowance.
19-101.03. Exempt property.
19-101.04. Family allowance.
19-101.05. Source, determination, and documentation; equitable apportionment when minor children are not in custody of the surviving spouse or surviving domestic partner.
19-101.06. Penalties.
19-102. Dower and curtesy abolished.
19-103 to 19-111. [Repealed].
Sec.
19-112. Devise or bequest to a spouse or domestic partner.
19-113. Renunciation of devises and bequests; election; time limitations; renunciation or election by guardian or fiduciary; maximum rights; effect of no devise or bequest or if nothing passes under either; antenuptial or postnuptial agreements.
19-114. Right of surviving spouse or surviving domestic partner if there is no renunciation.
19-115. Definitions.

§ 19-101. Family allowance; construction; penalties. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 693, Pub. L. 89-183, § 1; Aug. 11, 1971, 85 Stat. 314, Pub. L. 92-88, § 5; June 24, 1980, D.C. Law 3-72, § 204(a), 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 2, 42 DCR 63; Apr. 27, 2001, D.C. Law 13-292, § 801(b), 48 DCR 2087.)

Prior Codifications. — 1981 Ed., § 19-101. 1973 Ed., § 19-101.

Emergency legislation. — For temporary amendment of § 4 of D.C. Law 10-241, see § 2 of the Probate Reform Act of 1994 Emergency Amendment Act of 1995 (D.C. Act 11-79, June 28, 1995, 42 DCR 3452).

Legislative history of Law 3-72. — Law 3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-241. — Law

10-241, the "Probate Reform Act of 1994," was introduced in Council and assigned Bill No. 10-649, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-386 and transmitted to both Houses of Congress for its review. D.C. Law 10-241 became effective on March 21, 1995.

Legislative history of Law 13-292. — For Law 13-292, see notes following § 19-101.01.

Editor's notes. — Application of Law 10-241: Section 4 of D.C. Law 10-241, as amended by § 2 of D.C. Law 11-54, provided that the act shall be applicable to estates of decedents who died on or after July 1, 1995.

Section 1102 of D.C. Law 13-292 provided: "Sec. 1102. Applicability. For the purposes of Title 5 and Title 9 and sections 801(b), 805, and 806 of Title 8 of this act, the provisions relating to the administration of decedents' estates shall apply only to the estates of decedents who die on or after the effective date of this act."

Section 31 of D.C. Law 15-354 provided that Title 19 is designated Title 19 of the District of Columbia Official Code.

§ 19-101.01. Applicable law.

Sections 19-101.01 to 19-101.06 apply to the estate of a decedent who dies domiciled in the District of Columbia. Rights to homestead allowance, exempt property, and family allowance for a decedent who dies not domiciled in the District of Columbia are governed by the law of the decedent's domicile at death.

(Apr. 27, 2001, D.C. Law 13-292, § 801(c), 48 DCR 2087.)

Legislative history of Law 13-292. — Law 13-292, the "Omnibus Trusts and Estates Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-298, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 26, 2001, it was assigned Act No. 13-599 and transmitted to both Houses of Congress for its review. D.C. Law 13-292 became effective on April 27, 2001.

CASE NOTES

ANALYSIS

Allowances to surviving wife, husband or children—Nature and purpose in general.
—Assets from which taken, allowances to surviving wife, husband or children.
—Bar, waiver, or relinquishment, allowances to surviving wife, husband or children.
—Death of family member prior to award, allowances to surviving wife, husband or children.
—Priority over other claims, allowances to surviving wife, husband or children.
—Rights of creditors, allowances to surviving wife, husband or children.
Duties and liabilities of attorney to client.
Evidence.

Allowances to surviving wife, husband or children—Nature and purpose in general.

Provision in District of Columbia Code to effect that surviving spouse is entitled to $500 allowance out of personal estate of decedent for personal use of himself and minor children was intended to supply surviving spouse with some necessary money before any distribution or payment out of estate. D.C. Code 1961, § 19-101(a). In re Estate of Jones, 259 F. Supp. 951, 1966 U.S. Dist. LEXIS 7459 (D.D.C1966).

Since the family allowance is designed to reflect the public policy that the necessities of life for survivors should be covered without interruption, it vests immediately upon the death of the decedent, before the administration of the estate is completed. D.C. Code 1981, § 19-101. In re Estate of James, 743 A.2d 224, 2000 D.C. App. LEXIS 3 (2000).

— Assets from which taken, allowances to surviving wife, husband or children.

Full family allowance was payable from net proceeds of sale of real property ordered by probate court in order to pay decedent's creditors; Probate Reform Act included decedent's real property in his estate, for family allowance purposes. D.C. Code 1981, §§ 19-101(a), 20-101 et seq. In re Estate of Burton, 541 A.2d 599, 1988 D.C. App. LEXIS 76 (1988).

— Bar, waiver, or relinquishment, allowances to surviving wife, husband or children.

Silence of adult in care of decedent's minor

child with respect to personal representative's decision to sell decedent's house, which rendered the estate insolvent, was not a waiver of family allowance to which adult was entitled for the care of the child. D.C. Code 1981, § 19-101. In re Estate of James, 743 A.2d 224, 2000 D.C. App. LEXIS 3 (2000).

— Death of family member prior to award, allowances to surviving wife, husband or children.

Where husband died before he had received from deceased wife's estate the $500 allowance provided by District of Columbia Code for surviving spouse, allowance did not become part of his estate. D.C. Code 1961, § 19-101(a). In re Estate of Jones, 259 F. Supp. 951, 1966 U.S. Dist. LEXIS 7459 (D.D.C1966).

Right of surviving spouse to $500 allowance from personal estate of deceased spouse is not a vested right and if surviving spouse dies before receiving allowance, right to its payment is lost and money becomes part of estate of first deceased. D.C. Code 1961, § 19-101(a). In re Estate of Jones, 259 F. Supp. 951, 1966 U.S. Dist. LEXIS 7459 (D.D.C1966).

— Priority over other claims, allowances to surviving wife, husband or children.

Adult in care of decedent's minor child was entitled to payment of family allowance before estate funds were used to satisfy debts associated with the real property of the decedent, though estate would be insolvent after properly paying the numerous fees and debts associated with the upkeep and subsequent sale of decedent's home. D.C. Code 1981, § 19-101. In re Estate of James, 743 A.2d 224, 2000 D.C. App. LEXIS 3 (2000).

The family allowance generally takes priority over other probate claims, including priority over the payment of any expenses involved with the ongoing administration of a decedent's estate, except for funeral expenses. D.C. Code 1981, § 19-101. In re Estate of James, 743 A.2d 224, 2000 D.C. App. LEXIS 3 (2000).

— Rights of creditors, allowances to surviving wife, husband or children.

Statute governing the payment of a family allowance is intended to broadly protect the family allowance against all probate claims other than funeral expenses. D.C. Code 1981, § 19-101. In re Estate of James, 743 A.2d 224, 2000 D.C. App. LEXIS 3 (2000).

Duties and liabilities of attorney to client.

Testator's son lacked standing to litigate claim based upon testator's brother's alleged breach of fiduciary duty, as widow's attorney, to advise widow of her right to renounce will and claim her statutory share of estate; right to renounce will was personal to widow. Interdonato v. Interdonato, 521 A.2d 1124, 1987 D.C. App. LEXIS 292 (1987).

Evidence.

Deceased wife's personal representative's general denial that there was no evidence of divorce failed to create genuine issue of material fact as to whether wife and husband ever divorced sufficient to preclude summary judgment for husband on his claim that he was surviving spouse entitled to statutory share and family allowance. D.C. Code 1981, §§ 19-101, 19-113. Berryman v. Thorne, 700 A.2d 181, 1997 D.C. App. LEXIS 109 (1997).

§ 19-101.02. Homestead allowance.

A decedent's surviving spouse or surviving domestic partner is entitled to a homestead allowance of $15,000. If there is no surviving spouse or surviving domestic partner, each surviving minor child and each surviving dependent child of the decedent is entitled to a homestead allowance amounting to $15,000 divided by the number of surviving minor and surviving dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate, except as provided in section 20-906. The homestead allowance is in addition to any share passing to the surviving spouse, surviving domestic partner, or surviving minor or surviving dependent child by the will of the decedent, unless otherwise provided by intestate succession, or by way of elective share.

(Apr. 27, 2001, D.C. Law 13-292, § 801(c), 48 DCR 2087; Apr. 4, 2006, D.C. Law 16-79, § 5(c), 53 DCR 1035.)

Effect of amendments. — D.C. Law 16-79, substituted "surviving spouse or surviving domestic partner" for "surviving spouse" and substituted "surviving spouse, surviving domestic

partner, or surviving minor" for "surviving spouse or surviving minor".

Legislative history of Law 13-292. — For Law 13-292, see notes following § 19-101.01.

Legislative history of Law 16-79. — Law 16-79, the "Domestic Partnership Equality Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-52 which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on December 6, 2005, and January 4, 2006, respectively. Signed by the Mayor on January 26, 2006, it was assigned Act No. 16-265 and transmitted to both Houses of Congress for its review. D.C. Law 16-79 became effective on April 4, 2006.

§ 19-101.03. Exempt property.

In addition to the homestead allowance, the decedent's surviving spouse or surviving domestic partner is entitled from the estate to a value, not exceeding $10,000 in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse or surviving domestic partner, the decedent's surviving children are entitled jointly to the same value. If encumbered chattels are selected and the value in excess of security interests, plus that of other exempt property, is less than $10,000, or if there is not $10,000 worth of exempt property in the estate, the spouse, domestic partner, or children are entitled to other assets of the estate, if any, except for real property, to the extent necessary to make up the $10,000 value. Rights to exempt property have priority over all claims against the estate, except the homestead allowance, the family allowance, and as provided in section 20-906. These rights are in addition to any benefit or share passing to the surviving spouse, surviving domestic partner, or surviving children by the decedent's will, unless otherwise provided by intestate succession or by way of elective share.

(Apr. 27, 2001, D.C. Law 13-292, § 801(c), 48 DCR 2087; Apr. 4, 2006, D.C. Law 16-79, § 5(d), 53 DCR 1035.)

Effect of amendments. — D.C. Law 16-79 rewrote section, which had read as follows: "In addition to the homestead allowance, the decedent's surviving spouse is entitled from the estate to a value, not exceeding $10,000 in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the decedent's surviving children are entitled jointly to the same value. If encumbered chattels are selected and the value in excess of security interests, plus that of other exempt property, is less than $10,000, or if there is not $10,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, except for real property, to the extent necessary to make up the $10,000 value. Rights to exempt property have priority over all claims against the estate, except the homestead allowance, the family allowance, and as provided in section 20-906. These rights are in addition to any benefit or share passing to the surviving spouse or surviving children by the decedent's will, unless otherwise provided by intestate succession or by way of elective share."

Legislative history of Law 13-292. — For Law 13-292, see notes following § 19-101.01.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 19-101.02.

CASE NOTES

In general.

Death of decedent's surviving husband terminated right to family allowance from decedent's estate, where allowance had not been paid before husband died. Estate of Angelina Norma Terry, 134 WLR 233 (Super. Ct. 2006).

Homestead allowance and exempt property allowance vested when surviving husband survived decedent by more than 120 hours, even if he died before allowances were paid, and, thus, were payable to husband's estate. Estate of Angelina Norma Terry, 134 WLR 233 (Super. Ct. 2006).

§ 19-101.04. Family allowance.

(a) In addition to the right to homestead allowance and exempt property, the decedent's surviving spouse or surviving domestic partner, and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration. It is payable to the surviving spouse or surviving domestic partner, if living, for the use of the surviving spouse or surviving domestic partner and the decedent's surviving minor and dependent children; otherwise to the children, or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse or surviving domestic partner, the allowance may be made partially to the child or his or her guardian, or other person having the child's care and custody, and partially to the spouse or domestic partner, as their needs may appear. The family allowance is exempt from and has priority over all claims, except the homestead allowance, and as provided in section 20-906.

(b) The family allowance is not chargeable against any benefit or share passing to the surviving spouse, surviving domestic partner, or children by the will of the decedent, unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates the right to allowances not yet paid.

(Apr. 27, 2001, D.C. Law 13-292, § 801(c), 48 DCR 2087; Apr. 4, 2006, D.C. Law 16-79, § 5(e), 53 DCR 1035.)

Effect of amendments. — D.C. Law 16-79 rewrote the section.

Legislative history of Law 13-292. — For Law 13-292, see notes following § 19-101.01.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 19-101.02.

§ 19-101.05. Source, determination, and documentation; equitable apportionment when minor children are not in custody of the surviving spouse or surviving domestic partner.

(a) If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to homestead allowance or exempt property. Subject to this restriction, the surviving spouse, surviving domestic partner, guardians of minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make those selections if the surviving spouse, the surviving domestic partner, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time, or there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may disburse the family allowance in a lump sum not exceeding $15,000 in cash or in personalty at its fair value as the surviving spouse or surviving domestic partner may elect. The personal representative

or an interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined.

(b) If there are minor or other dependent children of the decedent who are not in the custody of the surviving spouse or surviving domestic partner, the personal representative shall equitably apportion the family allowance under this section between the surviving spouse or surviving domestic partner, minor and dependent children, and other children of the decedent.

(Apr. 27, 2001, D.C. Law 13-292, § 801(c), 48 DCR 2087; Apr. 4, 2006, D.C. Law 16-79, § 5(f), 53 DCR 1035.)

Effect of amendments. — D.C. Law 16-79 rewrote the section.

Legislative history of Law 13-292. — For Law 13-292, see notes following § 19-101.01.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 19-101.02.

§ 19-101.06. Penalties.

Whoever, with respect to the allowances or exemptions authorized by sections 19-101.01 to 19-101.05, (1) makes a false affidavit, (2) willfully violates an order of the Probate Division, or (3) willfully violates a provision of this chapter, shall be fined not more than $2,500 for each offense.

(Apr. 27, 2001, D.C. Law 13-292, § 801(c), 48 DCR 2087.)

Legislative history of Law 13-292. — For Law 13-292, see notes following § 19-101.01.

§ 19-102. Dower and curtesy abolished.

The estates of dower and curtesy are abolished.

(Sept. 14, 1965, 79 Stat. 694, Pub. L. 89-183, § 1; Apr. 27, 2001, D.C. Law 13-292, § 801(d), 48 DCR 2087; Mar. 2, 2007, D.C. Law 16-191, § 92(a), 53 DCR 6794.)

Cross references. — Assignment of dower in partition proceedings, see § 16-2901 et seq.

Prior Codifications. — 1981 Ed., § 19-102. 1973 Ed., § 19-102.

Effect of amendments. — D.C. Law 13-292 rewrote the section which had read:

"(a) The widow of a deceased man, with respect to parties who inter-married prior to November 29, 1957, or the widow or widower of a deceased person dying after March 15, 1962, is entitled to dower and its incidents as the rights thereto were known at common law with respect to widows, including the use, during her or his natural life, of one-third part of all the land on which the deceased spouse was seized of an estate of inheritance at any time during the marriage. The surviving spouse entitled to dower under this section may remain in the chief dwelling house of the decedent 40 days after the death, without being liable for rent therefor, within which period the dower of the surviving spouse, if not previously assigned to her or him, shall be so assigned. In the meantime, the surviving spouse may have reasonable sustenance out of the estate of the decedent.

"(b) The right of dower and its incidents provided for by subsection (a) of this section entitles the widow or widower to lands held by the deceased spouse at any time during the marriage, whether by legal or equitable title, and whether held by the decedent at the time of death, or not, but the right does not operate to the prejudice of a claim for the purchase money of the lands or other lien thereon.

"(c) The right of dower provided for by this

section does not attach to lands held by two or more persons as joint tenants while the joint tenancy exists. A husband may not claim a right of dower in land which his wife, during the coverture, conveyed or transferred to another person by her sole deed prior to November 29, 1957.

"(d) With respect to the real estate of a wife dying after November 29, 1957, there is no estate by the curtesy."

D.C. Law 16-191, in the section credit for D.C. Law 13-292, validated a previously made technical correction.

Legislative history of Law 13-292. — For Law 13-292, see notes following § 19-101.01.

Legislative history of Law 16-191. — Law 16-191, the "Technical Amendments Act of 2006", was introduced in Council and assigned Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

CASE NOTES

In general.

Abolition by the District of Columbia legislature of estates in dower meant that debtor-husband had no interest in real property which was titled solely in name of his non-debtor spouse, and on which he resided solely at sufferance of non-debtor spouse and not pursuant to any lease or other grant of possessory interest. In re Lawson, 333 B.R. 503, 2005 Bankr. LEXIS 2187 (2005).

§ 19-103. Forfeiture of dower by desertion and adultery. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 694, Pub. L. 89-183, § 1; Apr. 27, 2001, D.C. Law 13-292, § 801(e), 48 DCR 2087; Mar 2, 2007, D.C. Law 16-191, § 92(b), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 19-103. 1973 Ed., § 19-103.

Effect of amendments. — D.C. Law 16-191, in the section credit for D.C. Law 13-292, validated a previously made technical correction.

Legislative history of Law 13-292. — For Law 13-292, see notes following § 19-101.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 19-102.

§ 19-104. Absent or incompetent spouse. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 694, Pub. L. 89-183, § 1; Apr. 27, 2001, D.C. Law 13-292, § 801(e), 48 DCR 2087; Mar 2, 2007, D.C. Law 16-191, § 92(b), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 19-104. 1973 Ed., § 19-104.

Effect of amendments. — D.C. Law 16-191, in the section credit for D.C. Law 13-292, validated a previously made technical correction.

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-101.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 19-102.

§ 19-105. Jointure before marriage as bar to dower. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 695, Pub. L. 89-183, § 1; Apr. 27, 2001, D.C. Law 13-292, § 801(e), 48 DCR 2087; Mar 2, 2007, D.C. Law 16-191, § 92(b), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 19-105.
1973 Ed., § 19-105.

Effect of amendments. — D.C. Law 16-191, in the section credit for D.C. Law 13-292, validated a previously made technical correction.

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-101.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 19-102.

§ 19-106. Jointure after marriage; election. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 695, Pub. L. 89-183, § 1; Apr. 27, 2001, D.C. Law 13-292, § 801(e), 48 DCR 2087; Mar 2, 2007, D.C. Law 16-191, § 92(b), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 19-106.
1973 Ed., § 19-106.

Effect of amendments. — D.C. Law 16-191, in the section credit for D.C. Law 13-292, validated a previously made technical correction.

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-101.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 19-102.

§ 19-107. Effect of acts of one spouse. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 695, Pub. L. 89-183, § 1; Apr. 27, 2001, D.C. Law 13-292, § 801(e), 48 DCR 2087; Mar 2, 2007, D.C. Law 16-191, § 92(b), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 19-107.
1973 Ed., § 19-107.

Effect of amendments. — D.C. Law 16-191, in the section credit for D.C. Law 13-292, validated a previously made technical correction.

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-101.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 19-102.

§ 19-107a. Release of dower. [Repealed].

Repealed.

(Mar. 3, 1901, 31 Stat. 1267, ch. 854, § 494; June 30, 1902, 32 Stat. 531, ch. 1329; Oct. 1, 1976, D.C. Law 1087, § 33(c), 23 DCR 2544; Apr. 30, 1988, D.C. Law 7-104, § 5(a), 35 DCR 147; Apr. 27, 2001, D.C. Law 13-292, § 801(e), 48 DCR 2087; Mar. 2, 2007, D.C. Law 16-191, § 92(b), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 19-107a.
1973 Ed., § 19-107a.

Effect of amendments. — D.C. Law 16-191, in the section credit for D.C. Law 13-292, validated a previously made technical correction.

Legislative history of Law 1-87. — Law 1-87, the "Anti-Sex Discriminatory Language Act," was introduced in Council and assigned

Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976, and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-101.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 19-102.

§ 19-108. Recovery of dower withheld; damages. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 695, Pub. L. 89-183, § 1; Apr. 27, 2001, D.C. Law 13-292, § 801(e), 48 DCR 2087; Mar 2, 2007, D.C. Law 16-191, § 92(b), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 19-108. 1973 Ed., § 19-108.

Effect of amendments. — D.C. Law 16-191, in the section credit for D.C. Law 13-292, validated a previously made technical correction.

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-101.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 19-102.

§ 19-109. Recovery of dower obtained by default or collusion; damages. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 695, Pub. L. 89-183, § 1; Apr. 27, 2001, D.C. Law 13-292, § 801(e), 48 DCR 2087; Mar 2, 2007, D.C. Law 16-191, § 92(b), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 19-109. 1973 Ed., § 19-109.

Effect of amendments. — D.C. Law 16-191, in the section credit for D.C. Law 13-292, validated a previously made technical correction.

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-101.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 19-102.

§ 19-110. Assignment by guardian; rights of heir. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 696, Pub. L. 89-183, § 1; Apr. 27, 2001, D.C. Law 13-292, § 801(e), 48 DCR 2087; Mar 2, 2007, D.C. Law 16-191, § 92(b), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 19-110. 1973 Ed., § 19-110.

Effect of amendments. — D.C. Law 16-191, in the section credit for D.C. Law 13-292, validated a previously made technical correction.

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-101.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 19-102.

§ 19-111. Reendowment upon eviction from jointure. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 696, Pub. L. 89-183, § 1; Apr. 27, 2001, D.C. Law 13-292, § 801(e), 48 DCR 2087; Mar 2, 2007, D.C. Law 16-191, § 92(b), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 19-111. 1973 Ed., § 19-111.

Effect of amendments. — D.C. Law 16-191, in the section credit for D.C. Law 13-292, validated a previously made technical correction.

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-101.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 19-102.

§ 19-112. Devise or bequest to a spouse or domestic partner.

Subject to section 19-114, and unless it is otherwise expressed in the will, a devise of real estate or an interest therein, or a bequest of personal estate or an interest therein, to the surviving spouse or surviving domestic partner, bars his or her share in the decedent's estate.

(Sept. 14, 1965, 79 Stat. 696, Pub. L. 89-183, § 1; Apr. 27, 2001, D.C. Law 13-292, § 801(f), 48 DCR 2087; Apr. 4, 2006, D.C. Law 16-79, § 5(g), 53 DCR 1035; Mar. 2, 2007, D.C. Law 16-191, § 92(c), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 19-112. 1973 Ed., § 19-112.

Effect of amendments. — D.C. Law 13-292 deleted ", and his or her dower rights" following "decedent's estate".

D.C. Law 16-79 rewrote section which had read as follows: "Subject to section 19-114, and unless it is otherwise expressed in the will, a devise of real estate or an interest therein, or a bequest of personal estate or an interest therein, to the surviving spouse, bars his or her share in the decedent's estate."

D.C. Law 16-191, in the section credit for D.C. Law 13-292, validated a previously made technical correction.

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-101.01.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 19-101.02.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 19-102.

§ 19-113. Renunciation of devises and bequests; election; time limitations; renunciation or election by guardian or fiduciary; maximum rights; effect of no devise or bequest or if nothing passes under either; antenuptial or postnuptial agreements.

(a) Subject to section 19-114, a surviving spouse or surviving domestic partner is, by a devise or bequest specified in section 19-112, barred on any

statutory rights or interest he has in the real and personal estate of the deceased spouse or deceased domestic partner unless, within 6 months after the will of the deceased spouse or deceased domestic partner is admitted to probate, he files in the Probate Court a written renunciation to the following effect: "I, A B, surviving spouse or surviving domestic partner of _____ late of _____, deceased, renounce and quit all claim to any devise or bequest made to me by the last will of my spouse or domestic partner exhibited and proved according to law; and I elect to take in lieu thereof my legal share of the real and personal estate of my deceased spouse or deceased domestic partner.

(b) Repealed.

(c) If, during the period of 6 months specified by subsection (a) of this section, a suit is instituted to construe the will of the deceased spouse or deceased domestic partner, the period of 6 months for the filing of the renunciation or election commences to run from the date when the suit is finally determined. A renunciation or election may be made in behalf of a spouse or domestic partner unable to act for himself by reason of infancy, incompetency, or inability to manage his property, by the guardian or other fiduciary acting for the spouse or domestic partner when so authorized by the court having jurisdiction of the person of the spouse or domestic partner. The time for renunciation by a spouse or domestic partner may be extended before its expiration by an order of the Probate Court for successive periods of not more than 6 months each upon petition showing reasonable cause and on notice given to the personal representative and to the other persons herein referred to in such manner as the Probate Court directs.

(d) Where a decedent has not made a devise or bequest to the spouse or domestic partner, or nothing passes by a purported devise or bequest, the surviving spouse or surviving domestic partner is entitled to his legal share of the real and personal estate of the deceased spouse or deceased domestic partner without filing a written renunciation.

(e) The legal share of a surviving spouse or surviving domestic partner under subsection (a) or (d) of this section is such share or interest in the real or personal property of the deceased spouse or deceased domestic partner as he would have taken if the deceased spouse or deceased domestic partner had died intestate, not to exceed one-half of the net estate bequeathed and devised by the will.

(f) A valid antenuptial or postnuptial agreement entered into by the spouses or domestic partners determines the rights of the surviving spouse or the surviving domestic partner in the real and personal estate of the deceased spouse or deceased domestic partner and the administration thereof, but a spouse or domestic partner may accept the benefits of a devise or bequest made to him by the deceased spouse or deceased domestic partner.

(Sept. 14, 1965, 79 Stat. 696, Pub. L. 89-183, § 1; Mar. 24, 1998, D.C. Law 12-81, § 12, 45 DCR 745; Apr. 27, 2001, D.C. Law 13-292, § 801(g), 48 DCR 2087; Apr. 4, 2006, D.C. Law 16-79, § 5(h), 53 DCR 1035; Mar. 2, 2007, D.C. Law 16-191, § 92(d), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 19-113. 1973 Ed., § 19-113.

Effect of amendments. — D.C. Law 13-292, in subsec. (a), in the first sentence, deleted "or dower rights, as the case may be," following "deceased spouse", in the second sentence, deleted "(except than in lieu of my legal share of the real estate, I elect to take dower in all the real estate of my deceased spouse to which that right is applicable)" from the end; repealed subsec. (b); in subsec. (c), deleted "or (b)"following "subsection (a)"; in subsec. (d), deleted ", but may, instead, elect to take dower as provided by subsection (b) of this section" following "renunciation"; and, in subsec. (e), deleted ", including dower if elected in lieu of the legal share in the real estate," following "property of the deceased spouse", and deleted ", or, if dower is elected, one-half of the net personal property bequeathed and dower in the real estate devised" following "devised by the will". Prior to repeal, subsec. (b) read:

"(b) In similar manner, where the deceased spouse dies intestate of real estate, and letters of administration are issued with respect to the estate the surviving spouse is barred of dower rights, unless, within six months after the letters of administration have been issued with respect to the estate of the deceased spouse, he files in the Probate Court a written renunciation of his legal share of the intestate real estate to the following effect:

" 'I A B, widow or surviving husband of]]] deceased, in lieu of my legal share of the real estate which my deceased spouse died intestate, elect to take dower in all the real estate of my deceased spouse to which the right is applicable.'"

D.C. Law 16-79 rewrote subsecs. (a), (c), (d), (e), and (f).

D.C. Law 16-191, in the section credit for D.C. Law 13-292, validated a previously made technical correction.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-101.01.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 19-101.02.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 19-102.

CASE NOTES

ANALYSIS

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Consideration.

Release, like any other contract, must be supported by sufficient consideration, and consideration is not sufficient unless releasor receives something of value to which he or she had no previous right. Interdonato v. Interdonato, 521 A.2d 1124, 1987 D.C. App. LEXIS 292 (1987).

Construction with other statutes.

Statutes governing forfeiture of dower by desertion and adultery and transfer of property in case of absent or incompetent spouse do not impose restrictions on surviving spouse's ability to take statutory share. D.C. Code 1981, §§ 19-103, 19-104, 19-113. Berryman v. Thorne, 700 A.2d 181, 1997 D.C. App. LEXIS 109 (1997).

Dissolution of marriage.

Deceased wife's personal representative's general denial that there was no evidence of divorce failed to create genuine issue of material fact as to whether wife and husband ever divorced sufficient to preclude summary judgment for husband on his claim that he was surviving spouse entitled to statutory share and family allowance. D.C. Code 1981, §§ 19-101, 19-113. Berryman v. Thorne, 700 A.2d 181, 1997 D.C. App. LEXIS 109 (1997).

Election of surviving spouse.

— Capacity to elect, election of surviving spouse.

Widow's death while motion for ratification of her conservator's election for her to take

against her husband's will was under advisement had no effect on outcome of the determination where the election had been filed while she was still alive. D.C. Code 1981, § 19-113. Spencer v. Williams, 569 A.2d 1194, 1990 D.C. App. LEXIS 21 (1990).

Under the pecuniary approach the courts award the incompetent spouse the share of the deceased spouse's estate which has the largest monetary value. The pecuniary approach is the more fair and equitable. It offers not only the benefits of judicial economy because of its straightforward application, but more importantly, it preserves and safeguards the equitable rights of an incompetent surviving spouse in the marital estate. In re Henderson, 115 WLR 1409 (Super. Ct. 1987).

Subsection (c) does not require that a conservator have court approval before making the election in the first instance. Instead, the statute requires only the renunciation or election be filed within 6 months of the will having been admitted to probate. In re Henderson, 115 WLR 1409 (Super. Ct. 1987).

— In general.

Spouse may renounce devise or bequest left by will and elect to take such rights as would devolve to him in case of intestacy. D.C. Code 1961, § 19-113. Utley v. Graves, 258 F. Supp. 959, 1966 U.S. Dist. LEXIS 6764 (D.D.C1966), reversed by 382 F.2d 451, 127 U.S. App. D.C. 235, 1967 U.S. App. LEXIS 5769 (1967).

Spouse by accepting benefits of will relinquishes alternative rights to wife's or husband's property. D.C. Code 1961, § 19-113. Utley v. Graves, 258 F. Supp. 959, 1966 U.S. Dist. LEXIS 6764 (D.D.C1966), reversed by 382 F.2d 451, 127 U.S. App. D.C. 235, 1967 U.S. App. LEXIS 5769 (1967).

Once properly elected, competent spouse's right to take the statutory share is absolute, and surviving spouse can take the share for any reason, or for no reason, and need not get approval for the action. D.C. Code 1981, § 19-113. Spencer v. Williams, 569 A.2d 1194, 1990 D.C. App. LEXIS 21 (1990).

— Persons entitled to elect, election of surviving spouse.

Right of surviving spouse to renounce will and take statutory spousal share, is purely personal right, and cannot be exercised by administrator after such spouse's death. D.C. Code 1981, § 19-113(a, c, d). Sarbacher v. McNamara, 564 A.2d 701, 1989 D.C. App. LEXIS 178 (1989).

— Taking against will, election of surviving spouse.

Contention that revocable trust would be included in wife's estate for tax purposes was not proper basis for deciding whether it should be included in wife's "net estate" for purposes of determining husband's statutory share when he renounced his rights under wife's will; the proper basis was Maryland case law on marital property rights. D.C. Code § 19-113. Windsor v. Leonard, 475 F.2d 932, 1973 U.S. App. LEXIS 12023 (C.A.D.C. 1973).

Though wife, in creating trust, reserved power of revocation, right to all income during her lifetime, right to withdraw from principal, and right to amend, trust was not an improper evasion of surviving husband's statutory rights when he renounced his rights under wife's will, and thus trust assets were properly excluded from wife's "net estate" in determining husband's statutory share, where there was no evidence of any unusual or fraudulent motive for the transaction, wife created trust at age of 54, some 18 months before she died, and husband was left with a 50% share in an estate exceeding $100,000, in addition to personal holdings worth some $140,000. D.C. Code § 19-113. Windsor v. Leonard, 475 F.2d 932, 1973 U.S. App. LEXIS 12023 (C.A.D.C. 1973).

— Time for making election.

No tolling of the limitations period, running from the time the will was admitted to probate, for a surviving spouse to renounce "any devise or bequest made _____ by the last will of my husband" and to "elect to take in lieu thereof my legal share of the real and personal estate of my deceased spouse," was available as to a woman's sudden "discovery," three years after the will was admitted to probate, that she was the decedent's common law wife and therefore was allegedly entitled to claim a spouse's statutory share of the estate. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Testator's widow was not entitled to renounce will and elect to take her statutory share nearly ten years after probate, even when specific bequest to widow of life income interest in marina was abated pro rata with other specific bequests, in order to satisfy administrative costs and debts of estate. D.C. Code 1981, § 19-113. Dickson v. Mintz, 634 A.2d 1243, 1993 D.C. App. LEXIS 314 (1993).

Election of widow's conservator to take against the will was timely where the conservator filed a renunciation one day before the six-month period was to expire, even though court was not formally requested to ratify the election until a month later and did not do so until 13 and one-half months after will was admitted to probate, although it would be better practice for conservator to request authorization from the court prior to the election. D.C. Code 1981, § 19-113. Spencer v. Williams, 569 A.2d 1194, 1990 D.C. App. LEXIS 21 (1990).

As an equitable matter, the date for computing the 6-month period for renunciation or election, should be the date the conservator was appointed rather than the date the spouse's will was admitted to probate. In re Henderson, 115 WLR 1409 (Super. Ct. 1987).

In general.

Decedent's widow was entitled to her statutory share of decedent's estate regardless of outcome of contest of will which did not mention widow. D.C. Code §§ 19-113, 19-303. In re Estate of Wilson, 416 A.2d 228, 1980 D.C. App. LEXIS 306 (1980).

Today's underlying policy for the statutory elective share of a surviving spouse includes not only protection against disinheritance and assurance of financial security, but also recognizes the contributions of the spouse to the acquisition of decedent's wealth, better described as the marital estate in some cases. In re Henderson, 115 WLR 1409 (Super. Ct. 1987).

Incompetent surviving spouse.

In determining whether to approve conservator's election for incompetent surviving spouse to take against the will, the best interests of the incompetent will, in most, instances be met by electing the option which provides the surviving spouse with the greatest monetary value. D.C. Code 1981, § 19-113. Spencer v. Williams, 569 A.2d 1194, 1990 D.C. App. LEXIS 21 (1990).

Only where there is clear indication of the incompetent spouse's actual wishes, not simply conjecture as to what one in his or her situation might generally do, should court take the wishes of the incompetent surviving spouse into consideration in determining whether conservator's decision to elect against the will is in the surviving spouse's best interest. D.C. Code 1981, § 19-113. Spencer v. Williams, 569 A.2d 1194, 1990 D.C. App. LEXIS 21 (1990).

Trial court properly ratified conservator's election for incompetent spouse to take against the will where that election resulted in her taking approximately $160,000 outright, whereas the will provided her with approximately $200,000 in trust, with the remainder to go to beneficiaries named by the husband in his will. D.C. Code 1981, § 19-113. Spencer v. Williams, 569 A.2d 1194, 1990 D.C. App. LEXIS 21 (1990).

Inter vivos transfers.

Factors controlling determination of whether inter vivos transfer was an improper circumvention of marital rights of the surviving spouse include "completeness" of the transfer, motive for the transfer, participation by transferee in alleged fraud on surviving spouse, time between transfer and death, and degree to which surviving spouse is left without interest in decedent's property or other means of support. D.C. Code § 19-113. Windsor v. Leonard, 475 F.2d 932, 1973 U.S. App. LEXIS 12023 (C.A.D.C. 1973).

Mutual wills.

Mere fact that husband and wife possessed similar testamentary intent and made mutual wills was insufficient for court to determine that oral trust existed for husband's children; children failed to establish that husband and wife had oral agreement for survivor to hold estate in trust. Duggan v. Keto, 554 A.2d 1126, 1989 D.C. App. LEXIS 32 (1989).

Necessity for and form of renunciation.

Putative husband's filing of complaint in Probate Division seeking dower interest in real property of his deceased common-law wife did not constitute required renunciation of bequest made to him by wife in her will; statute prescribes specific form of renunciation required for assertion of dower interest. D.C. Code 1981, § 19-113(a). Coates v. Watts, 622 A.2d 25, 1993 D.C. App. LEXIS 64 (1993).

Although standard common disaster clause in wife's will required husband to survive wife for 30 days to be entitled to receive income under trust, husband's life estate in trust vested at time of wife's death and therefore renunciation was required to entitle husband's estate to statutory spousal share of wife's estate. D.C. Code 1981, § 19-113(a, c, d). Sarbacher v. McNamara, 564 A.2d 701, 1989 D.C. App. LEXIS 178 (1989).

Beneficiary of a will may renounce a share under the will at any time, even before it is offered for probate. D.C. Code 1981, § 19-113(a). Sarbacher v. McNamara, 564 A.2d 701, 1989 D.C. App. LEXIS 178 (1989).

Bequest to surviving spouse, under which spouse would receive only what trustee in her discretion chose to disburse, was not illusory, and therefore renunciation was required for estate of surviving spouse to claim his statutory share. D.C. Code 1981, § 19-113(a, c, d). Sarbacher v. McNamara, 564 A.2d 701, 1989 D.C. App. LEXIS 178 (1989).

Potential for conflict of interest between trustee, as remainderman, and surviving spouse, as beneficiary, of lifetime trust was not basis for finding that bequest to surviving spouse was illusory, and therefore renunciation was required for estate of surviving spouse to claim his statutory share. D.C. Code 1981, § 19-113(a, c, d). Sarbacher v. McNamara, 564 A.2d 701, 1989 D.C. App. LEXIS 178 (1989).

Spendthrift trusts.

Fact that beneficiary of spendthrift trust was settlor's spouse and elected to take under will creating trust rather than under statute entitling surviving spouse to specified share of decedent's trust did not in itself render income from trust subject to claims of beneficiary's creditors, and case would be remanded for

determination whether debt sued upon was incurred by beneficiary for necessaries, in which case claim would be allowed against trust income. D.C. Code § 19-113. American Sec. & Trust Co. v. Utley, 382 F.2d 451, 1967 U.S. App. LEXIS 5769 (C.A.D.C. 1967).

Where will of deceased spouse creates spendthrift trust for benefit of surviving spouse, spendthrift trust is not a free and voluntary gift, inasmuch as surviving spouse gives consideration for receiving benefits of trust by surrendering statutory rights and beneficiary is in effect a purchaser of benefits, he is in same position as though he were creator of trust and provisions surrounding fund with immunity from claims of creditors are void. D.C. Code 1961, § 19-113. Utley v. Graves, 258 F. Supp. 959, 1966 U.S. Dist. LEXIS 6764 (D.D.C1966), reversed by 382 F.2d 451, 127 U.S. App. D.C. 235, 1967 U.S. App. LEXIS 5769 (1967).

Testamentary spendthrift trust created by beneficiary's deceased spouse was invalid as to its spendthrift features, that is, it was not free of claims of creditors, since beneficiary had had right to elect either to accept benefits of will or take share that would have devolved upon him in case of intestacy and by choosing the former he surrendered his statutory rights and therefore gave consideration for receiving benefits of trust. D.C. Code 1961, § 19-113. Utley v. Graves, 258 F. Supp. 959, 1966 U.S. Dist. LEXIS 6764 (D.D.C1966), reversed by 382 F.2d 451, 127 U.S. App. D.C. 235, 1967 U.S. App. LEXIS 5769 (1967).

Taxes.

Congress adopted the marital deduction to provide opportunity for equalization of the tax treatment of estates in common law and community property states. D.C. Code §§ 19-113, 19-303, 20-1901; 26 U.S.C. (I.R.C.1954) § 2056. Del Mar v. United States, 390 F.2d 466, 1968 U.S. App. LEXIS 8494 (C.A.D.C. 1968), writ of certiorari denied by 393 U.S. 828, 89 S. Ct. 92, 21 L. Ed. 2d 99, 1968 U.S. LEXIS 674 (1968).

Purpose of the marital deduction provision does not modify meaning of District of Columbia statute whereby dissenting widow can take one-third of surplus after debts, and hence the amount of property received by widow's election, and thus the amount eligible for marital deduction, was a portion of the surplus remaining after deducting entire amount of estate taxes, in view of District of Columbia rule rejecting doctrine of general equitable apportionment of estate taxes. D.C. Code §§ 19-113, 19-303, 20-1901; 26 U.S.C. (I.R.C.1954) § 2056. Del Mar v. United States, 390 F.2d 466, 1968 U.S. App. LEXIS 8494 (C.A.D.C. 1968), writ of certiorari denied by 393 U.S. 828, 89 S. Ct. 92, 21 L. Ed. 2d 99, 1968 U.S. LEXIS 674 (1968).

Tax clause in testator's will directing that "estate taxes are to be paid out of the residuary estate" and that "there shall be no apportionment of such taxes or duties as might otherwise be required by law" did not affect testator's wife's obligation to pay estate taxes, since she had elected to take statutory share of her husband's estate; when wife decided to take elective share, testator's will became inapplicable to her. D.C. Code 1981, § 19-113(a, e). Rockler v. Sevareid, 691 A.2d 97, 1997 D.C. App. LEXIS 40 (1997).

Wife's elective share of her husband's estate was equivalent to intestate share of her husband's estate and was therefore subject to apportionment statute, and thus, by virtue of marital deduction recognized in apportionment statute, wife's share was not subject to federal or district estate taxes. D.C. Code 1981, §§ 19-113, 19-303, 47-3714. Rockler v. Sevareid, 691 A.2d 97, 1997 D.C. App. LEXIS 40 (1997).

§ 19-114. Right of surviving spouse or surviving domestic partner if there is no renunciation.

A surviving spouse or surviving domestic partner who does not renounce as provided by section 19-113 is entitled to the benefit of all provisions in his favor in the will of the deceased spouse or deceased domestic partner and shall share, in accordance with sections 19-301 and 19-302 in any estate of the deceased spouse or deceased domestic partner undisposed of by the will.

(Sept. 14, 1965, 79 Stat. 697, Pub. L. 89-183, § 1; Apr. 4, 2006, D.C. Law 16-79, § 5(i), 53 DCR 1035.)

Prior Codifications. — 1981 Ed., § 19-114. 1973 Ed., § 19-114.

Effect of amendments. — D.C. Law 16-79 rewrote section which had read as follows: "A surviving spouse who does not renounce as provided by section 19-113 is entitled to the benefit of all provisions in his favor in the will of the deceased spouse and shall share, in

accordance with sections 19-301, 19-302, 19-303, 19-304, and 20-1901, in any estate of the deceased spouse undisposed of by the will."

Legislative history of Law 16-79. — For Law 16-79, see notes following § 19-101.02.

References in text. — The reference to section 20-1901, appearing near the end of this section, is no longer accurate in light of the revisions of Title 20 by the Act of June 24, 1980, D.C. Law 3-72 and by D.C. Law 10-241.

§ 19-115. Definitions.

For the purposes of this chapter, the term:

(1) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(2) "Domestic partnership" shall have the same meaning as provided in § 32-701(4).

(3) "Probate Court" means the Superior Court of the District of Columbia.

(July 29, 1970, 84 Stat. 566, Pub. L. 91-358, title I, § 148 (2)(A); Apr. 4, 2006, D.C. Law 16-79, § 5(j), 53 DCR 1035.)

Prior Codifications. — 1981 Ed., § 19-115. 1973 Ed., § 19-115.

Effect of amendments. — D.C. Law 16-79 rewrote section which had read as follows: "For purposes of this chapter 'Probate Court' means the Superior Court of the District of Columbia."

Legislative history of Law 16-79. — For Law 16-79, see notes following § 19-101.02.

CHAPTER 3. INTESTATES' ESTATES.

Sec.
19-301. Course of descents generally.
19-302. Share of spouse or domestic partner.
19-303, 19-304.[Repealed].
19-305. Distribution of surplus after payment to surviving spouse or surviving domestic partner.
19-306. Children to share equally.
19-307. Grandchildren's share.
19-308. Share of father and mother.
19-309. Share of brother or sister or their descendants.
19-310. Brothers and sisters to share equally.
19-311. Share of collateral relations.
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19-313. Death of distributee before distribution.
19-314. Share of posthumous children.
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19-316. Share of children born out of wedlock; their heirs; mother; father.
19-317. Trust estates.
19-318. Antenuptial children.
19-319. Advancements.
19-320. Felonious homicide as barring inheritance; insurance policies; bona fide purchasers.
19-321. Descent through alien ancestor no bar.
19-322. Definitions.

§ 19-301. Course of descents generally.

The real estate in the District of Columbia, of a deceased person, male or female, if not devised, shall descend in fee simple, and the surplus of the personal estate of a deceased resident of the District, if not bequeathed, shall be distributed, to the surviving spouse or surviving domestic partner, children, and other persons in the manner provided by this chapter. The heirs specified by this section take the real estate as tenants in common in the same proportions as they take the surplus personal estate as provided by this chapter.

(Sept. 14, 1965, 79 Stat. 697, Pub. L. 89-183, § 1; June 24, 1980, D.C. Law 3-72, § 204(b), 27 DCR 2155; Apr. 30, 1988, D.C. Law 7-104, § 5(b), 35 DCR 147; Apr. 4, 2006, D.C. Law 16-79, § 5(l), 53 DCR 1035.)

Cross references. — Adopted children inheritance by, see § 16-312.

Fraternal benefit association, distribution of death benefits, see § 31-5701.

Insurance policy proceeds, distribution, see § 14-504.

Wrongful death actions, distribution of proceeds, see § 16-

Prior Codifications. — 1981 Ed., § 19-301. 1973 Ed., § 19-301.

Effect of amendments. — D.C. Law 16-79 substituted "surviving spouse or surviving domestic partner," for "surviving spouse,".

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 19-101.

Legislative history of Law 7-104. — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 19-107a.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 19-101.02.

CASE NOTES

In general.

Where will gave, devised, and bequeathed to wife of testator all her statutory rights in his realty and personalty wheresoever situated at time of his death, she was given such rights as she had in his property under controlling statutes immediately following his death testate, and she was not given intestate share in testator's property. D.C. Code 1961, §§ 18-101, 18-201, 18-201a, 18-210, 18-211, 18-703, 18-801; A.R.S. § 14-201; T.C.A. §§ 31-601 to 31-603; 20 P.S.Pa. § 1.2(1). Nicodemus v. Bain, 344 F.2d 501, 1965 U.S. App. LEXIS 6963 (C.A.D.C. 1965), writ of certiorari denied by 382 U.S. 891, 86 S. Ct. 183, 15 L. Ed. 2d 149, 1965 U.S. LEXIS 416 (1965).

Evidence failed to establish that testator who executed will giving wife all her statutory rights in his realty and personalty and giving entire residue of his estate to wife and his two

children, share and share alike, actually intended to give widow merely value of rights she would have had by statute if he had died intestate, in addition to the one-third share of the residue. D.C. Code 1961, §§ 18-101, 18-201, 18-201a, 18-210, 18-211, 18-703, 18-801; A.R.S. § 14-201; T.C.A. §§ 31-601 to 31-603; 20 P.S.Pa. § 1.2(1). Nicodemus v. Bain, 344 F.2d 501, 1965 U.S. App. LEXIS 6963 (C.A.D.C. 1965), writ of certiorari denied by 382 U.S. 891, 86 S. Ct. 183, 15 L. Ed. 2d 149, 1965 U.S. LEXIS 416 (1965).

§ 19-302. Share of spouse or domestic partner.

The intestate share of a decedent's surviving spouse or surviving domestic partner is:

(1) The entire intestate estate, if no descendant or parent of the decedent survives the decedent;

(2) Two-thirds of any balance of the intestate estate, if the decedent's surviving descendants are also descendants of the surviving spouse or surviving domestic partner and there is no other descendant of the surviving spouse or surviving domestic partner who survives the decedent;

(3) Three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent;

(4) One-half of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse or surviving domestic partner and the surviving spouse or surviving domestic partner has one or more surviving descendants who are not descendants of the decedent; or

(5) One-half of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse or surviving domestic partner.

(Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1; Apr. 27, 2001, D.C. Law 13-292, § 805(b), 48 DCR 2087; Apr. 4, 2006, D.C. Law 16-79, § 5(m), 53 DCR 1035.)

Prior Codifications. — 1981 Ed., § 19-302. 1973 Ed., § 19-302.

Effect of amendments. — D.C. Law 13-292 rewrote the section which had read:

"When the intestate leaves a surviving spouse and no child, parent, grandchild, brother, or sister, or the child of a brother or sister of the intestate, the surviving spouse is entitled to the whole."

D.C. Law 16-79, in the section heading, substituted "spouse or domestic partner" for "spouse"; in the lead-in language, substituted "surviving spouse or surviving domestic partner" for "surviving spouse"; and, in pars. (2), (4), and (5), substituted "surviving spouse or surviving domestic partner" for "surviving spouse".

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-101.01.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 19-101.02.

Editor's notes. — Section 1102 of D.C. Law 13-292 provided: "Sec. 1102. Applicability. For the purposes of Title 5 and Title 9 and sections 801(b), 805, and 806 of Title 8 of this act, the provisions relating to the administration of decedents' estates shall apply only to the estates of decedents who die on or after the effective date of this act."

CASE NOTES

ANALYSIS

Estate and inheritance taxes.
In general.
Review.
Summary judgment.

Estate and inheritance taxes.

Purpose of the marital deduction provision does not modify meaning of District of Columbia statute whereby dissenting widow can take one-third of surplus after debts, and hence the amount of property received by widow's election, and thus the amount eligible for marital deduction, was a portion of the surplus remaining after deducting entire amount of estate taxes, in view of District of Columbia rule rejecting doctrine of general equitable apportionment of estate taxes. D.C. Code §§ 19-113, 19-303, 20-1901; 26 U.S.C. (I.R.C.1954) § 2056. Del Mar v. United States, 390 F.2d 466, 1968 U.S. App. LEXIS 8494 (C.A.D.C. 1968), writ of certiorari denied by 393 U.S. 828, 89 S. Ct. 92, 21 L. Ed. 2d 99, 1968 U.S. LEXIS 674 (1968).

Where decedent died intestate survived by her husband, two grandnephews, and six nieces, and surviving husband was entitled to one-half of estate under District of Columbia law, and such one-half qualified for federal estate tax marital deduction, share of husband was not to bear any part of federal estate tax. D.C. Code 1961, § 19-304; 26 U.S.C. (I.R.C.1954) § 2056. In re Estate of Collins, 269 F. Supp. 633, 1967 U.S. Dist. LEXIS 10664 (D.D.C1967).

Tax clause in testator's will directing that "estate taxes are to be paid out of the residuary estate" and that "there shall be no apportionment of such taxes or duties as might otherwise be required by law" did not affect testator's wife's obligation to pay estate taxes, since she had elected to take statutory share of her husband's estate; when wife decided to take elective share, testator's will became inapplicable to her. D.C. Code 1981, § 19-113(a, e). Rockler v. Sevareid, 691 A.2d 97, 1997 D.C. App. LEXIS 40 (1997).

Wife's elective share of her husband's estate was equivalent to intestate share of her husband's estate and was therefore subject to apportionment statute, and thus, by virtue of marital deduction recognized in apportionment statute, wife's share was not subject to federal or district estate taxes. D.C. Code 1981, §§ 19-113, 19-303, 47-3714. Rockler v. Sevareid, 691 A.2d 97, 1997 D.C. App. LEXIS 40 (1997).

In general.

Decedent's widow was entitled to her statutory share of decedent's estate regardless of outcome of contest of will which did not mention widow. D.C. Code §§ 19-113, 19-303. In re Estate of Wilson, 416 A.2d 228, 1980 D.C. App. LEXIS 306 (1980).

Review.

Argument by intestate landowner's great grandchildren that their mother survived landowner and was entitled to two thirds of his estate, while landowner's surviving spouse was entitled to one-third, was not raised for the first time on appeal and, therefore, was preserved; even though the great grandchildren made differing claims about amount of estate they inherited, they claimed portion of estate in opposition to summary judgment motion and in motion to alter or amend judgment. Somerville v. Randall, 908 A.2d 1155, 2006 D.C. App. LEXIS 534 (2006).

Summary judgment.

Genuine issue of material fact as to whether intestate landowner's grandchild was only surviving descendent precluded summary judgment on amount of estate inherited by grandchild and landowner's surviving spouse. Somerville v. Randall, 908 A.2d 1155, 2006 D.C. App. LEXIS 534 (2006).

§ 19-303. When surviving spouse entitled to one-third. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1; Apr. 27, 2001, D.C. Law 13-292, § 805(c), 48 DCR 2087.)

Prior Codifications. — 1981 Ed., § 19-303. 1973 Ed., § 19-303.

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-101.01.

§ 19-304. When surviving spouse entitled to one-half. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1; Apr. 27, 2001, D.C. Law 13-292, § 805(c), 48 DCR 2087.)

Prior Codifications. — 1981 Ed., § 19-304. 1973 Ed., § 19-304.

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-101.01.

§ 19-305. Distribution of surplus after payment to surviving spouse or surviving domestic partner.

The surplus, above the share of the surviving spouse or surviving domestic partner, or the whole surplus, when there is no surviving spouse or surviving domestic partner, descends and is distributed as provided by this chapter and by section 19-701.

(Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1; Apr. 4, 2006, D.C. Law 16-79, § 5(n), 53 DCR 1035.)

Prior Codifications. — 1981 Ed., § 19-305. 1973 Ed., § 19-305.

Effect of amendments. — D.C. Law 16-79, in the section heading, substituted "surviving spouse or surviving domestic partner" for "surviving spouse"; and substituted "surviving spouse or surviving domestic partner" for "surviving spouse" throughout section.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 19-101.02.

CASE NOTES

In general.

Superior court would not use its equity power to disturb statutory scheme for intestate succession and permit inheritance by one who was neither the natural nor the adopted child of an intestate, under theory of equitable adoption. In re Hattie Dean Lucas, 133 WLR 663 (Super. Ct. 2005).

§ 19-306. Children to share equally.

When the intestate leaves children and no other descendants, the surplus is divided equally among them.

(Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 19-306. 1973 Ed., § 19-306.

CASE NOTES

ANALYSIS

After-born children.
Children born out of wedlock.
Children of the half blood.
Stepchildren.

After-born children.

Equitable principles did not allow reformation of life policy to include as beneficiary insured's after-born son, where policy unambiguously designated by name as beneficiaries insured's already-born children, there was no mention of children generally other than in reference to those children designated by name, nor was there any clause respecting children to be born at some future point in time. Penn Mut. Life Ins. Co. v. Abramson, 530 A.2d 1202, 1987 D.C. App. LEXIS 432 (1987).

There was no mutual mistake which would allow reformation of life policy to make insured's after-born son beneficiary; insured and insurer did not omit son because of mutual mistake, since he had not been conceived at time contract was entered, and there was no proof that parties agreed upon specific term to cover after-born children but mistakenly left such term out of policy. Penn Mut. Life Ins. Co.

v. Abramson, 530 A.2d 1202, 1987 D.C. App. LEXIS 432 (1987).

Children born out of wedlock.

Where deceased wage earner was, at the time of his death, not supporting his illegitimate children, had never acknowledged them, and was not living with them, and where, under the intestacy laws of the wage earner's domicile, the District of Columbia, the children could not inherit from decedent, said children were not entitled to child insurance benefits under the Social Security Act, notwithstanding their attack on the constitutionality of the District of Columbia intestacy laws and their claim that it was violative of due process for the statutory scheme to permit legitimate children to inherit while denying that privilege to similarly situated illegitimates. Social Security Act, § 216(h)(2)(A), (3)(C), 42 U.S.C. § 416(h)(2)(A), (3)(C); D.C. Code § 19-316. Watts v. Veneman, 476 F.2d 529, 1973 U.S. App. LEXIS 11705 (C.A.D.C. 1973).

Incorporation of the District of Columbia intestacy laws into the social security laws for purposes of determining the eligibility for payments to illegitimate children of a deceased wage earner whose domicile was located in the District of Columbia is not impermissible. Social Security Act, § 216(h)(2)(A), (3)(C), 42 U.S.C. § 416(h)(2)(A), (3)(C); D.C. Code § 19-316. Watts v. Veneman, 476 F.2d 529, 1973 U.S. App. LEXIS 11705 (C.A.D.C. 1973).

Fact that District of Columbia intestate succession statute does not permit illegitimate children to inherit as freely as legitimate children does not render the statute unconstitutional. D.C. Code § 19-316. Watts v. Veneman, 476 F.2d 529, 1973 U.S. App. LEXIS 11705 (C.A.D.C. 1973).

District of Columbia intestate succession statute whereby illegitimate children may inherit from their mother only does not discriminate against illegitimate children in violation of due process. D.C. Code §§ 19-306, 19-316; U.S. Const. Amend. 5. Watts v. Veneman, 334 F. Supp. 482, 1971 U.S. Dist. LEXIS 11032 (1971), affirmed in part and reversed in part by 476 F.2d 529, 155 U.S. App. D.C. 84, 1973 U.S. App. LEXIS 11705 (1973).

Children of the half blood.

The statute abolishing common-law distinction between kindred of the whole and half blood is not restricted to particular types of situations, but governs whenever there arises a problem of reciprocal rights as between persons of the whole and half blood; wherever such a situation is confronted irrespective of its form, no distinction may be made. D.C. Code 1961, §§ 19-306, 19-315. In re Estate of Humphrey, 254 F. Supp. 33, 1966 U.S. Dist. LEXIS 8068 (D.D.C1966), reversed by 384 F.2d 987, 128 U.S. App. D.C. 18, 1966 U.S. App. LEXIS 3918 (1966).

Stepchildren.

Under District of Columbia statute abolishing common-law distinction between kindred of the whole and half blood, a stepchild may inherit from a stepparent who dies intestate. D.C. Code 1961, §§ 19-306, 19-315. In re Estate of Humphrey, 254 F. Supp. 33, 1966 U.S. Dist. LEXIS 8068 (D.D.C1966), reversed by 384 F.2d 987, 128 U.S. App. D.C. 18, 1966 U.S. App. LEXIS 3918 (1966).

§ 19-307. Grandchildren's share.

(a) Subject to subsection (b) of this section, and to section 19-319, when the intestate leaves a child and a child of a deceased child, the child of the deceased child takes such share as his deceased parent would, if living, be entitled to, and every other descendant in existence at the death of the intestate stands in the place of his deceased ancestor.

(b) Those in equal degree claiming in the place of an ancestor take equal shares.

(Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1.)

Cross references. — Advancement as satisfaction of devise or bequest, see § 18-307.

Prior Codifications. — 1981 Ed., § 19-307. 1973 Ed., § 19-307.

CASE NOTES

ANALYSIS

Adoption.
Stepgrandchildren.

Adoption.

Even if decedent had been equitably adopted by petitioner's Maryland grandparents, before enactment of Maryland adoption laws, this did not give him status of one legally adopted, and did not confer on petitioner right to share in his estate or right, under District of Columbia law, to file caveat to will. D.C. Code 1961, §§ 16-222, 19-307. In re Estate of Jarboe, 235 F. Supp. 505, 1964 U.S. Dist. LEXIS 6825 (D.D.C1964).

Stepgrandchildren.

Stepgrandchildren of a decedent lacked standing to maintain action to annul marriage of decedent and to set aside conveyance of interest in realty to decedent's wife after marriage, since stepgrandchildren as such could not contest marriage alone, and their claim to realty rested upon will of decedent which devised realty to decedent's stepgrandchildren, but will was not probated so that stepgrandchildren could not take realty even if conveyance and marriage were voided. D.C. Code 1940, § 19-313. Norris v. Harrison, 198 F.2d 953, 1952 U.S. App. LEXIS 3263 (C.A.D.C. 1952).

§ 19-308. Share of father and mother.

When the intestate leaves no child, or descendant, the whole is divided equally between the father and mother or their survivor.

(Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1; Sept. 10, 1966, 80 Stat. 738, Pub. L. 89-567, § 1.)

Prior Codifications. — 1981 Ed., § 19-308. 1973 Ed., § 19-308.

CASE NOTES

Construction with other laws.

Under District of Columbia Survival Act, decedent's sister did not have standing to bring wrongful death action, despite sister's contention that right to pursue wrongful death claim was property of their mother and descended to her upon mother's death, where mother was alive throughout statutory period for filing suit, but failed to do so. Dickens v. District of Columbia, 502 F.Supp.2d 90, 2007 U.S. Dist. LEXIS 61150 (2007).

§ 19-309. Share of brother or sister or their descendants.

When the intestate leaves a brother or sister, or child or descendant of a brother or sister, and no child, descendant, or father or mother, the brother, sister, or child or descendant of a brother or sister is entitled to the whole.

(Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 19-309. 1973 Ed., § 19-309.

CASE NOTES

Sufficiency of evidence.

Finding by probate court that plaintiff was daughter of intestate decedent and entitled to share in estate, rather than decedent's sister, was reversible error, even though flawed birth certificate supported plaintiff's claim; there was no evidence that decedent publicly acknowledged plaintiff as his daughter, plaintiff was raised as decedent's sister, and plaintiff failed to testify in support of claim or to defend against allegation that paternity claim was opportunistic fabrication. Murphy v. McCloud, 650 A.2d 202, 1994 D.C. App. LEXIS 227 (1994).

§ 19-310. Brothers and sisters to share equally.

Each brother and sister of the intestate is entitled to an equal share, and the children or descendants of a brother or sister of the intestate, stand in the place of their deceased parents respectively.

(Sept. 14, 1965, 79 Stat. 698, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 19-310. 1973 Ed., § 19-310.

§ 19-311. Share of collateral relations.

After children, descendants, parents, brothers, and sisters of the deceased and their descendants, all collateral relations in equal degree share, and representation among the collaterals is not allowed.

(Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 19-311. 1973 Ed., § 19-311.

CASE NOTES

In general.

Where testatrix willed her property to her heirs at law and next of kin in accordance with the laws in force in the District of Columbia and died leaving only personal property, the testatrix' first cousins were entitled to take all of such personalty as against the testatrix' second cousins. D.C. Code 1940, §§ 18-101, 18-711. Binford v. Diller, 177 F.2d 731, 1949 U.S. App. LEXIS 3274 (C.A.D.C. 1949).

Appellees met their burden of establishing their status as first cousins once removed of decedent and were therefore lawful heirs of decedent's estate, rather than decedent's second cousins. D.C. Code 1981, § 19-311. Hill v. White, 589 A.2d 918, 1991 D.C. App. LEXIS 93 (1991).

Son of decedent's brother presented sufficient evidence to warrant conclusion that he was entitled to inherit intestate decedent's estate as her heir. In re Hattie Dean Lucas, 133 WLR 663 (Super. Ct. 2005).

§ 19-312. Share of grandfather and grandmother.

The grandparents, or such of them as survive, share alike where there are no collaterals.

(Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 19-312. 1973 Ed., § 19-312.

§ 19-313. Death of distributee before distribution.

When a person entitled to distribution dies before the distribution is made, his share goes to his estate or legal representatives.

(Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 19-313. 1973 Ed., § 19-313.

§ 19-314. Share of posthumous children.

A right in the inheritance to real or personal property does not accrue to or vest in a person other than the children of the intestate and their descendants,

unless the person is in being and capable in law to take as heir or distributee at the time of the intestate's death; but a child or descendant of the intestate born after the death of the intestate has the same right of inheritance as if born before his death.

(Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 19-314. 1973 Ed., § 19-314.

CASE NOTES

In general.

Under statute providing that no right in inheritance shall accrue to or invest in any person unless such person is "in being" and capable in law to take as an heir at time of intestate's death, the quoted words refer to a child born prior to death of intestate. D.C. Code 1940, § 18-103. Blethyn v. Bidder, 80 F.Supp. 962, 1948 U.S. Dist. LEXIS 2217 (D.D.C1948).

Statute providing that no right in inheritance shall accrue or invest in any person other than children of intestate and their descendants unless such person is in being and capable in law to take as heir at time of intestate's death did not preclude heir of illegitimate daughter from inheriting from her legitimate half-brother. D.C. Code 1940, §§ 18-101, 18-103, 18-104, 18-107. Blethyn v. Bidder, 80 F.Supp. 962, 1948 U.S. Dist. LEXIS 2217 (D.D.C1948).

§ 19-315. No distinction between whole- and half-blood.

There is no distinction between the kindred of the whole- and the half-blood.

(Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 19-315. 1973 Ed., § 19-315.

CASE NOTES

In general.

Under District of Columbia statute abolishing common-law distinction between kindred of the whole and half blood, a stepchild may inherit from a stepparent who dies intestate. D.C. Code 1961, §§ 19-306, 19-315. In re Estate of Humphrey, 254 F. Supp. 33, 1966 U.S. Dist. LEXIS 8068 (D.D.C1966), reversed by 384 F.2d 987, 128 U.S. App. D.C. 18, 1966 U.S. App. LEXIS 3918 (1966).

The statute abolishing common-law distinction between kindred of the whole and half blood is not restricted to particular types of situations, but governs whenever there arises a problem of reciprocal rights as between persons of the whole and half blood; wherever such a situation is confronted irrespective of its form, no distinction may be made. D.C. Code 1961, §§ 19-306, 19-315. In re Estate of Humphrey, 254 F. Supp. 33, 1966 U.S. Dist. LEXIS 8068 (D.D.C1966), reversed by 384 F.2d 987, 128 U.S. App. D.C. 18, 1966 U.S. App. LEXIS 3918 (1966).

§ 19-316. Share of children born out of wedlock; their heirs; mother; father.

Children born out of wedlock and the heirs of children born out of wedlock are capable of taking real and personal estate by inheritance from their mother or from their father if parenthood has been established, or from each other, or from heirs of each other, as the case may be, in like manner as if born in lawful wedlock, and the mother and such father, and their respective heirs, are capable of inheriting from such children.

(Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1; Oct. 1, 1976, D.C. Law 1-87,

§ 22(a), (c), 23 DCR 2544; June 13, 1978, D.C. Law 2-78, § 2, 24 DCR 9282; June 24, 1980, D.C. Law 3-72, § 204(c), 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 19-316. 1973 Ed., § 19-316.

Legislative history of Law 1-87. — Law 1-87, the "Anti-Sex Discriminatory Language Act," was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976, and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-78. — Law 2-78, the "Paternity Proceedings Clarifying Amendment Act of 1978," was introduced in Council and assigned Bill No. 2-232, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 21, 1978, and March 7, 1978, respectively. There being no action by the Mayor, it was assigned Act No. 2-172 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-72. — Law 3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

CASE NOTES

ANALYSIS

Anti lapse effect.
Common law.
Common law marriage.
Construction and application.
Construction with other statutes.
In general.
Insurance proceeds.
Jurisdiction and venue.
Presumptions and burden of proof.
Social security benefits.
Status of biological father.
Unacknowledged children.
Validity.

Anti lapse effect.

Where will devised residue to heirs at law of testatrix' sisters if they were deceased at time of distribution, and at that time both were deceased, an illegitimate child of a predeceased sister of the testatrix was entitled to inherit as an heir at law of his deceased mother under the applicable District of Columbia statutes. D.C. Code 1940, §§ 18-107, 18-709, 18-710, 18-716. Wilson v. Charlent, 81 F.Supp. 690, 1949 U.S. Dist. LEXIS 1743 (D.D.C1949).

Common law.

Where statute of District of Columbia had materially liberalized status of bastards to inherit, other pertinent sections of the District Code must be interpreted in the light of the congressional intent to liberalize common-law status of illegitimate children. D.C. Code 1940, §§ 18-101, 18-104, 18-107. Blethyn v. Bidder, 80 F.Supp. 962, 1948 U.S. Dist. LEXIS 2217 (D.D.C1948).

Common law marriage.

Son, whose parents had entered into common-law marriage, was entitled to declaration that he was legitimate, and was thus entitled to land which father owned at his death. Code 1950, § 64-7 (repealed). Murphy v. Holland, 237 Va. 212, 377 S.E.2d 363, 1989 Va. LEXIS 56 (1989).

Construction and application.

Intestacy statute permitting children born out of wedlock to inherit from their parents and which permits determination of paternity after death of putative father did not apply to will construction arising when out-of-wedlock children of testatrix' deceased son claimed under will and did not deprive another beneficiary of property right that was allegedly vested because the statute in effect at time of death of testatrix and her son did not permit postdeath paternity determination. D.C. Code 1981, § 19-316. Wood v. Manly, 526 A.2d 21, 1987 D.C. App. LEXIS 359 (1987).

This section applies prospectively. In re Estate of Plater, 113 WLR 1429 (Super Ct. 1985).

Construction with other statutes.

Statute providing that no right in inheritance shall accrue or invest in any person other than children of intestate and their descendants unless such person is in being and capable in law to take as heir at time of intestate's death did not preclude heir of illegitimate daughter from inheriting from her legitimate half-brother. D.C. Code 1940, §§ 18-101, 18-103, 18-104, 18-107. Blethyn v. Bidder, 80 F.Supp. 962, 1948 U.S. Dist. LEXIS 2217 (D.D.C1948).

Under statute providing that in no case shall there be any distinction between kindred of whole and half blood, and statute liberalizing

status of bastards to inherit, illegitimate daughter was a "half-sister" of legitimate son, and in that capacity she and her descendants had same status as another legitimate son and his heirs in distribution of estate of the deceased legitimate son. D.C. Code 1940, §§ 18-101, 18-104, 18-107. Blethyn v. Bidder, 80 F.Supp. 962, 1948 U.S. Dist. LEXIS 2217 (D.D.C1948).

Superior court would not use its equity power to disturb statutory scheme for intestate succession and permit inheritance by one who was neither the natural nor the adopted child of an intestate, under theory of equitable adoption. In re Hattie Dean Lucas, 133 WLR 663 (Super. Ct. 2005).

In general.

For a child born out of wedlock to inherit from putative father, facts and circumstances establishing parenthood must have come into existence prior to father's death; however, child is not required to bring paternity action prior to putative father's death. In re Estate of Glover, 470 A.2d 743, 1983 D.C. App. LEXIS 551 (1983).

While natural father could designate child as sole beneficiary under will, he could not, absent adoption, make child his heir at law. D.C. Code § 19-316. In re J.H., 313 A.2d 874, 1974 D.C. App. LEXIS 344 (1974).

Insurance proceeds.

Where man insured under the Federal Employees Group Life Insurance Act died leaving no widow and without having designated beneficiary of his policy, the claims of his children, who were illegitimate but who had been acknowledged by him, were entitled to take precedence over the claim of his mother. 5 U.S.C. § 8705(a); D.C. Code §§ 16-2341, 16-2342, 16-2347. Green v. Green, 365 A.2d 610, 1976 D.C. App. LEXIS 404 (1976).

For purposes of the substitute beneficiary clause in the Federal Employees Group Life Insurance Act, term "children" must be defined by reference to local law, but the local law to be applied is local law governing support and maintenance of children rather than inheritance laws. 5 U.S.C. §§ 8701 et seq., 8705(a). Green v. Green, 365 A.2d 610, 1976 D.C. App. LEXIS 404 (1976).

Under District of Columbia law, both illegitimate and legitimate children are included within the term "children" as used in the substitute beneficiary clause of the Federal Employees Group Life Insurance Act. 5 U.S.C. §§ 8701 et seq., 8705(a); D.C. Code §§ 16-2341, 16-2342, 16-2347. Green v. Green, 365 A.2d 610, 1976 D.C. App. LEXIS 404 (1976).

Jurisdiction and venue.

Letter from United States Office of Personnel Management (OPM) to potential beneficiary of Federal Employees' Group Life Insurance Act (FEGLIA) life insurance policy, stating that she was eligible for continued health benefits coverage as insured's surviving child, constituted secondary evidence supporting insured's alleged paternity of her for purposes of determining whether she was insured's "recognized natural child" entitled to policy proceeds under FEGLIA. 5 U.S.C. §§ 8701-8716, 8705(a); 5 C.F.R.§ 870.901(a)(1), (a)(2)(ii). Mobley v. Metropolitan Life Ins. Co., 907 F. Supp. 495, 1995 U.S. Dist. LEXIS 18427 (1995).

The probate division of the superior court had jurisdiction to resolve complaint for declaratory judgment as to rights of plaintiff as a person born out of wedlock to inherit from putative father. D.C. Code 1981, § 19-316. In re Estate of Glover, 470 A.2d 743, 1983 D.C. App. LEXIS 551 (1983).

No Superior Court division may declare that deceased insured was father of illegitimate child; however, the Court can certify a complaint which states a cognizable civil cause of action for trial on the issue of whether a support obligation arose during the life of the insured, so as to entitle the illegitimate child, if acknowledged by him, to insurance proceeds. Carrington v. Metropolitan Life Ins. Co., 111 WLR 53 (Super. Ct. 1983).

The jurisdiction of the Probate Division of the Superior Court is limited to declaring, in a decedent's estate, whether parenthood of an illegitimate child was established before the decedent died and therefore whether a claimed illegitimate child legally is an heir of the decedent entitled to inherit therefrom. In re Estate of Glover, 110 WLR 2809 (Super. Ct. 1982).

Presumptions and burden of proof.

Following death of putative father, illegitimate child can prove that he or she is a child born out of wedlock and an heir by offering evidence of parenthood that was in existence prior to death of putative father. D.C. Code 1973, § 19-316. In re Estate of Glover, 470 A.2d 743, 1983 D.C. App. LEXIS 551 (1983).

Illegitimate child seeking to inherit from putative father must establish by a preponderance of the evidence that putative father was his father. D.C. Code 1981, § 16-909(a). In re Estate of Glover, 470 A.2d 743, 1983 D.C. App. LEXIS 551 (1983).

Social security benefits.

Incorporation of the District of Columbia intestacy laws into the social security laws for purposes of determining the eligibility for payments to illegitimate children of a deceased wage earner whose domicile was located in the District of Columbia is not impermissible. Social Security Act, § 216(h)(2)(A), (3)(C), 42 U.S.C. § 416(h)(2)(A), (3)(C); D.C. Code § 19-

316. Watts v. Veneman, 476 F.2d 529, 1973 U.S. App. LEXIS 11705 (C.A.D.C. 1973).

Status of biological father.

In the District of Columbia the biological father of an illegitimate child is not automatically treated as the legal "parent" for all purposes of the law. D.C. Code §§ 16-312, 19-316, 19-318, 31-309. Butler v. Metropolitan Life Ins. Co., 500 F. Supp. 661, 1980 U.S. Dist. LEXIS 16154 (1980).

Unacknowledged children.

Where deceased wage earner was, at the time of his death, not supporting his illegitimate children, had never acknowledged them, and was not living with them, and where, under the intestacy laws of the wage earner's domicile, the District of Columbia, the children could not inherit from decedent, said children were not entitled to child insurance benefits under the Social Security Act, notwithstanding their attack on the constitutionality of the District of Columbia intestacy laws and their claim that it was violative of due process for the statutory scheme to permit legitimate children to inherit while denying that privilege to similarly situated illegitimates. Social Security Act, § 216(h)(2)(A), (3)(C), 42 U.S.C. § 416(h)(2)(A), (3)(C); D.C. Code § 19-316. Watts v. Veneman, 476 F.2d 529, 1973 U.S. App. LEXIS 11705 (C.A.D.C. 1973).

In absence of evidence that deceased married the mother of children born out of wedlock and acknowledged the children as his own, they were not entitled to share in his estate. D.C. Code 1940, § 18-106. Blethyn v. Bidder, 80 F.Supp. 962, 1948 U.S. Dist. LEXIS 2217 (D.D.C1948).

In absence of evidence that deceased married the mother of children born out of wedlock and acknowledged the children as his own, they were not entitled to share in his estate. D.C. Code 1940, § 18-106. Blethyn v. Bidder, 80 F.Supp. 962, 1948 U.S. Dist. LEXIS 2217 (D.D.C1948).

Validity.

Fact that District of Columbia intestate succession statute does not permit illegitimate children to inherit as freely as legitimate children does not render the statute unconstitutional. D.C. Code § 19-316. Watts v. Veneman, 476 F.2d 529, 1973 U.S. App. LEXIS 11705 (C.A.D.C. 1973).

District of Columbia intestate succession statute is not unconstitutional by reason of fact that it does not permit illegitimate children to inherit as freely as legitimate children. D.C. Code § 19-316. Severance v. Weinberger, 362 F. Supp. 1348, 1973 U.S. Dist. LEXIS 12881 (1973).

District of Columbia intestate succession statute whereby illegitimate children may inherit from their mother only does not discriminate against illegitimate children in violation of due process. D.C. Code §§ 19-306, 19-316; U.S. Const. Amend. 5. Watts v. Veneman, 334 F. Supp. 482, 1971 U.S. Dist. LEXIS 11032 (1971), affirmed in part and reversed in part by 476 F.2d 529, 155 U.S. App. D.C. 84, 1973 U.S. App. LEXIS 11705 (1973).

§ 19-317. Trust estates.

When a trustee is seized of the naked legal estate in real estate in fee simple, and dies intestate thereof, the legal estate descends according to section 19-301 to the persons who would inherit the beneficial estate if it were vested in them.

(Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 19-317. 1973 Ed., § 19-317.

§ 19-318. Antenuptial children.

When a man has a child by a woman whom he afterwards marries, the child, if acknowledged by the man, is, in virtue of the marriage and acknowledgment, legitimated and capable in law of inheriting and transmitting heritable property as if born in wedlock.

(Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 19-318. 1973 Ed., § 19-318.

CASE NOTES

In general.

Letter from United States Office of Personnel Management (OPM) to potential beneficiary of Federal Employees' Group Life Insurance Act (FEGLIA) life insurance policy, stating that she was eligible for continued health benefits coverage as insured's surviving child, constituted secondary evidence supporting insured's alleged paternity of her for purposes of determining whether she was insured's "recognized natural child" entitled to policy proceeds under FEGLIA. 5 U.S.C. §§ 8701-8716, 8705(a); 5 C.F.R.§ 870.901(a)(1), (a)(2)(ii). Mobley v. Metropolitan Life Ins. Co., 907 F. Supp. 495, 1995 U.S. Dist. LEXIS 18427 (1995).

In the District of Columbia the biological father of an illegitimate child is not automatically treated as the legal "parent" for all purposes of the law. D.C. Code §§ 16-312, 19-316, 19-318, 31-309. Butler v. Metropolitan Life Ins. Co., 500 F. Supp. 661, 1980 U.S. Dist. LEXIS 16154 (1980).

§ 19-319. Advancements.

(a) If a child or descendant has been advanced by the intestate during the intestate's lifetime, by settlement or portion, real estate or personal estate, the value thereof is reckoned for the purposes of descent and distribution as part of the estate of the intestate descendible and to be divided among his heirs or distributed to his distributees. Where the advancement is equal to or greater than a share, the child or descendant is excluded from any further share in the estate of the intestate and is not liable to refund any part of the amount so advanced; but the surviving spouse has no advantage by bringing the advancement into reckoning. Where the advancement is less than a share, the child or descendant receives so much, only, of the personal estate, and inherits so much, only, of the real estate, of the intestate, as is sufficient to make all the shares of all the children in the whole property, including the advancement, equal. The value of real or personal estate so advanced shall be estimated according to the worth thereof when given. Maintenance or education of a child or descendant, or giving him money or real estate, without a view to a portion or settlement in life, is not an advancement.

(b) Where an advancement to be adjusted, as provided by subsection (a) of this section, consisted of real estate, the adjustment shall be made out of the real estate descendible to the heirs. Where the advancement was in personal estate, the adjustment shall be made out of the surplus of the personal estate to be distributed to the distributees. Where either species of estate is insufficient to enable the adjustment to be fully made, the deficiency shall be adjusted out of the other.

(Sept. 14, 1965, 79 Stat. 699, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 19-319. 1973 Ed., § 19-319.

§ 19-320. Felonious homicide as barring inheritance; insurance policies; bona fide purchasers.

(a) A person convicted of felonious homicide of another person, by way of murder or manslaughter, takes no estate or interest in property of any kind from that other person by way of:

(1) inheritance, distribution, devise, or bequest; or

(2) remainder, reversion, or executory devise dependent upon the death of the other person.

The estate, interest, or property to which the person so convicted would have succeeded or would have taken in any way from or after the death of the decedent goes, instead, as if the person so convicted had died before the decedent.

(b) Policies of insurance directly or indirectly procured by a person convicted as specified by subsection (a) of this section, for his own benefit or payable to him upon the life of the person killed by him, are void.

(c) This section does not affect the rights of bona fide purchasers of property specified by subsection (a) of this section, for value and without notice.

(Sept. 14, 1965, 79 Stat. 700, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 19-320. 1973 Ed., § 19-320.

CASE NOTES

ANALYSIS

Cause of death.
Construction and application.
Insurance proceeds.
Joint tenancy property.
Manslaughter convictions.
Purpose.

Cause of death.

Even if gross negligence of testator's sister caused his death, sister did not forfeit her right to take as will beneficiary, in absence of showing that sister intended to kill or harm testator and in absence of conviction for murder or manslaughter. D.C. Code 1981, § 19-320. Cheatle v. Cheatle, 662 A.2d 1362, 1995 D.C. App. LEXIS 146 (1995).

Finding of gross neglect toward decedent is insufficient as matter of law to deprive beneficiary of her right to receive inheritance. D.C. Code 1981, § 19-320. Cheatle v. Cheatle, 662 A.2d 1362, 1995 D.C. App. LEXIS 146 (1995).

Construction and application.

The phrase "taken in any way" in statute barring murderer from receiving victim's property which murderer would have taken in any way but for the murder does not expand express list in statute enumerating forms of property interests and means of receiving property; such a reading would render list superfluous, a disfavored result. D.C. Code 1981, § 19-320(a). Gallimore v. Washington, 666 A.2d 1200, 1995 D.C. App. LEXIS 211 (1995).

Insurance proceeds.

Person who has been found guilty in trial court but has appeal pending is not "convicted" for purposes of Virginia statute barring convicted murderers from sharing in insurance proceeds of their victims. Va.Code 1950, §§ 55-401, subd. 1, 55-411, subd. A; § 64.1-18 (repealed). Prudential Ins. Co. v. Tull, 524 F. Supp. 166, 1981 U.S. Dist. LEXIS 15232 (1981).

Wife who had been found guilty of murder of her husband but whose petition for writ of error was pending in the Supreme Court of Virginia was not "convicted" for purposes of Virginia statute barring convicted murderers from sharing in insurance proceeds of their victims, and thus, there could be no distribution of proceeds of life insurance policy issued to deceased until Virginia Supreme Court ruled on appeal. Va.Code 1950, §§ 55-401, subd. 1, 55-411, subd. A.; § 64.1-18 (repealed). Prudential Ins. Co. v. Tull, 524 F. Supp. 166, 1981 U.S. Dist. LEXIS 15232 (1981).

Beneficiary of insurance policy who kills insured by murder or voluntary manslaughter cannot take the proceeds of policy. Life Ins. Co. of Va. v. Cashatt, 206 F.Supp. 410, 1962 U.S. Dist. LEXIS 3757 (1962).

Proceeds of life policy were payable to insured's children, who were contingent beneficiaries, rather than insured's estate, where insured's wife, principal beneficiary, had shot and killed insured and had been convicted of voluntary manslaughter. Life Ins. Co. of Va. v. Cashatt, 206 F.Supp. 410, 1962 U.S. Dist. LEXIS 3757 (1962).

Under common law, one who feloniously and intentionally kills another is barred from receiving proceeds of life insurance policy on victim. Cheatle v. Cheatle, 662 A.2d 1362, 1995 D.C. App. LEXIS 146 (1995).

Proof, by preponderance of evidence in civil proceeding, of beneficiary's intent to kill victim is required to invoke common law rule that one who feloniously and intentionally kills another is barred from receiving proceeds of life insurance policy on victim; proof beyond reasonable

doubt is not required. Cheatle v. Cheatle, 662 A.2d 1362, 1995 D.C. App. LEXIS 146 (1995).

Involuntary manslaughter was "felonious homicide" such that husband convicted of that crime in the shooting death of his wife was statutorily barred from recovering proceeds of policy insuring her life and payable to him as beneficiary. D.C. Code 1981, § 19-320(a). Turner v. Travelers Ins. Co., 487 A.2d 614, 1985 D.C. App. LEXIS 297 (1985).

Son convicted of second-degree murder of his father was barred from receiving proceeds of his father's life insurance policy. D.C. Code 1973, § 19-320(a). Napoleon v. Heard, 455 A.2d 901, 1983 D.C. App. LEXIS 304 (1983).

There were no grounds warranting imposition of constructive trust on insurance proceeds so as to allow reformation of life policy to name as beneficiary insured's after-born son, notwithstanding that insured was murdered rather than having died of natural causes. Penn Mut. Life Ins. Co. v. Abramson, 530 A.2d 1202, 1987 D.C. App. LEXIS 432 (1987).

Joint tenancy property.

Even assuming that statute barring murderer from receiving victim's property did not apply to rights of survivorship, statute did not displace common law with respect to property acquired by murderer from his victim by virtue of a right of survivorship. D.C. Code 1981, § 19-320(a). Gallimore v. Washington, 666 A.2d 1200, 1995 D.C. App. LEXIS 211 (1995).

Statute barring murderer from receiving victim's property only applied to victim's interests in joint tenancy that murderer, as other joint tenant, might have received following victim's death, which was present right to share in possession and profits of the property; future interest was not covered by statute inasmuch as it was destroyed when victim was murdered and thus did not transfer at her death. D.C. Code 1981, § 19-320(a). Gallimore v. Washington, 666 A.2d 1200, 1995 D.C. App. LEXIS 211 (1995).

Heirs of murder victim would acquire tenancy in common in victim's property that had been held in joint tenancy with right of survivorship with murderer under statute barring murderer from receiving victim's property, and murderer's joint tenancy interest would be converted to a tenancy in common with victim's heirs. D.C. Code 1981, § 19-320(a). Gallimore v. Washington, 666 A.2d 1200, 1995 D.C. App. LEXIS 211 (1995).

Inasmuch as application of both common law and statute barring a murderer from receiving victim's property, as applied to situation in which joint tenant murdered the other joint tenant, would result in conversion of joint tenancy to a tenancy in common, Court of Appeals would not address whether statute applied to rights of survivorship. D.C. Code 1981, § 19-320(a). Gallimore v. Washington, 666 A.2d 1200, 1995 D.C. App. LEXIS 211 (1995).

Persons convicted of murdering a joint tenant may not take an interest in the property through the right of survivorship. Washington v. Gallimore, 122 WLR 1125 (Super. Ct. 1994).

Where husband and wife had acquired property as tenants by the entirety, and where the deed purported to convey the property to them as husband and wife, husband could not claim a share in the property after having killed his wife. Washington v. Gallimore, 122 WLR 1125 (Super. Ct. 1994).

Manslaughter convictions.

Conviction for involuntary manslaughter triggers bar of slayer statute upon person convicted of felonious homicide from taking an estate or interest from victim. D.C. Code 1981, § 19-320. Cheatle v. Cheatle, 662 A.2d 1362, 1995 D.C. App. LEXIS 146 (1995).

Conviction for murder or manslaughter is complete statutory bar to inheriting from victim under District of Columbia slayer statute. D.C. Code 1981, § 19-320. Cheatle v. Cheatle, 662 A.2d 1362, 1995 D.C. App. LEXIS 146 (1995).

Purpose.

Common law policy behind rule precluding murderer from receiving property due to victim's death is to prevent murderer from profiting from his wrong. Gallimore v. Washington, 666 A.2d 1200, 1995 D.C. App. LEXIS 211 (1995).

§ 19-321. Descent through alien ancestor no bar.

In making title by descent it is no bar to a party claiming as heir that an ancestor, whether living or dead, through whom he derives his descent from the intestate, is or has been an alien.

(Sept. 14, 1965, 79 Stat. 700, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 19-321. 1973 Ed., § 19-321.

§ 19-322. Definitions.

For the purposes of this chapter, the term "domestic partner" shall have the same meaning as provided in § 32-701(3).

(Apr. 4, 2006, D.C. Law 16-79, § 5(o), 53 DCR 1035.)

Legislative history of Law 16-79. — For Law 16-79, see notes following § 19-101.02.

CHAPTER 5. SIMULTANEOUS DEATHS; UNIFORM LAW.

Sec.
19-501. Definitions.
19-502. Requirement of survival by 120 hours under probate laws.
19-503. Requirement of survival by 120 hours under governing instruments.
19-504. Co-owners with right of survivorship; requirement of survival by 120 hours.
19-505. Evidence of death or status.
19-506. Exceptions.
19-507. Protection of payors, bona fide purchasers, and other third parties; personal liability of recipient.
19-508. Uniformity of application and construction.
19-509. Application to existing relationships.

§ 19-501. Definitions.

For the purposes of the chapter, the term:

(1) "Co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitles one or more to the whole of the property or account on the death of the other or others.

(2) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

(3) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency, subdivision, or instrumentality, or any other person authorized or obligated by law or a governing instrument to make payments.

(Apr. 27, 2001, D.C. Law 13-292, § 202, 48 DCR 2087.)

Prior Codifications. — 1981 Ed., § 19-501. 1973 Ed., § 19-501.

Legislative history of Law 13-292. — Law 13-292, the "Omnibus Trusts and Estates Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-298, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 26, 2001, it was assigned Act No. 13-599 and transmitted to both Houses of Congress for its review. D.C. Law 13-292 became effective on April 27, 2001.

Editor's notes. — This section was previously enacted by section 1 of Public Law 89-183, 79 Stat. 700, but repealed by implication by D.C. Law 13-292.

Uniform Law: This section is based upon § 1 of the Uniform Simultaneous Death Act (1993 Act).

§ 19-502. Requirement of survival by 120 hours under probate laws.

(a) Except as provided in section 19-506, if the title to property, the devolution of property, the right to elect an interest in property, or the right to exempt property, homestead or family allowance depends upon an individual's survivorship of the death of another individual, an individual who is not established by clear and convincing evidence to have survived the other individual by 120 hours is deemed to have predeceased the other individual.

(b) This section does not apply if its application would result in a taking of intestate estate by the District of Columbia.

(Apr. 27, 2001, D.C. Law 13-292, § 202, 48 DCR 2087.)

Prior Codifications. — 1981 Ed., § 19-502. 1973 Ed., § 19-502.

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-501.

Editor's notes. — This section was previously enacted by section 1 of Public Law 89-183, 79 Stat. 700, but repealed by implication by D.C. Law 13-292.

Uniform Law: This section is based upon § 2 of the Uniform Simultaneous Death Act (1993 Act).

CASE NOTES

In general.

Homestead allowance and exempt property allowance vested when surviving husband survived decedent by more than 120 hours, even if he died before allowances were paid, and, thus, were payable to husband's estate. Estate of Angelina Norma Terry, 134 WLR 233 (Super. Ct. 2006).

§ 19-503. Requirement of survival by 120 hours under governing instruments.

Except as provided in section 19-506, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is deemed to have predeceased the event.

(Apr. 27, 2001, D.C. Law 13-292, § 202, 48 DCR 2087.)

Prior Codifications. — 1981 Ed., § 19-503. 1973 Ed., § 19-503.

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-501.

Editor's notes. — This section was previously enacted by section 1 of Public Law 89-183, 79 Stat. 700, but repealed by implication by D.C. Law 13-292.

Uniform Law: This section is based upon § 3 of the Uniform Simultaneous Death Act (1993 Act).

§ 19-504. Co-owners with right of survivorship; requirement of survival by 120 hours.

Except as provided in section 19-506:

(1) If it is not established by clear and convincing evidence that one of 2 co-owners with right of survivorship survived the other co-owner by 120 hours, one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours; and

(2) If there are more than 2 co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by 120 hours, the property passes in the proportion that one bears to the whole number of co-owners.

(Apr. 27, 2001, D.C. Law 13-292, § 202, 48 DCR 2087.)

Prior Codifications. — 1981 Ed., § 19-504. 1973 Ed., § 19-504.

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-501.

Editor's notes. — This section was previously enacted by section 1 of Public Law 89-183, 79 Stat. 700, but repealed by implication by D.C. Law 13-292.

Uniform Law: This section is based upon § 4 of the Uniform Simultaneous Death Act (1993 Act).

§ 19-505. Evidence of death or status.

In addition to the rules of evidence, the following rules relating to a determination of death and status apply:

(1) Death occurs when an individual is determined to be dead under section 7-601.

(2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent.

(3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

(4) In the absence of prima facie evidence of death under paragraph (2) or (3) of this subsection, the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

(5) If an individual is presumed to be dead under section 14-701, the individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

(6) In the absence of evidence disputing the time of death stipulated on a document described in paragraph (2) or (3) of this subsection, a document described in paragraph (2) or (3) that stipulates a time of death 120 hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by 120 hours.

(Apr. 27, 2001, D.C. Law 13-292, § 202, 48 DCR 2087.)

Prior Codifications. — 1981 Ed., § 19-505. 1973 Ed., § 19-505.

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-501.

Editor's notes. — This section was previously enacted by section 1 of Public Law 89-183, 79 Stat. 700, but repealed by implication by D.C. Law 13-292.

Uniform Law: This section is based upon § 5 of the Uniform Simultaneous Death Act (1993 Act).

§ 19-506. Exceptions.

Survival by 120 hours is not required if:

(1) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(2) The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event for a specified period, but survival of the event or the specified period must be established by clear and convincing evidence;

(3) The imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under section 19-901(a)(1), (b)(1), or (c)(1) or to become invalid under section 19-901(a)(2), (b)(2), or (c)(2), but survival must be established by clear and convincing evidence; or

(4) The application of a 120-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition, but survival must be established by clear and convincing evidence.

(Apr. 27, 2001, D.C. Law 13-292, § 202, 48 DCR 2087.)

Prior Codifications. — 1981 Ed., § 19-506. 1979 Ed., § 19-506.

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-501.

References in text. — "This part," referred to in subsec. (b), is Division III of the D.C. Official Code, Decedents' Estates and Fiduciary Relations.

Editor's notes. — This section was previously enacted by section 1 of Public Law 89-183, 79 Stat. 700, but repealed by implication by D.C. Law 13-292.

Uniform Law: This section is based upon § 6 of the Uniform Simultaneous Death Act (1993 Act).

§ 19-507. Protection of payors, bona fide purchasers, and other third parties; personal liability of recipient.

(a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a person designated in a governing instrument who, under this chapter, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the person's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this chapter. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this chapter.

(b) Written notice of a claimed lack of entitlement under subsection (a) of this section must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this chapter, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this chapter, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for

the value of amounts paid to or items of property transferred to or deposited with the court.

(c) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this chapter to return the payment, item of property, or benefit nor liable under this chapter for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this chapter is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this chapter.

(d) If this chapter or any part of this chapter is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this chapter, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this chapter is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this chapter or part of this chapter not preempted.

(Apr. 27, 2001, D.C. Law 13-292, § 202, 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-501.

Editor's notes. — Uniform Law: This section is based upon § 7 of the Uniform Simultaneous Death Act (1993 Act).

§ 19-508. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among the states enacting it.

(Apr. 27, 2001, D.C. Law 13-292, § 202, 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-501.

Editor's notes. — Uniform Law: This section is based upon § 8 of the Uniform Simultaneous Death Act (1993 Act).

§ 19-509. Application to existing relationships.

On the effective date of this chapter [April 27, 2001]:

(1) An act done before the effective date in any proceeding and any accrued right is not impaired by this chapter. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before the effective date, the provisions remain in force with respect to that right; and

(2) Any rule of construction or presumption provided in this chapter

applies to instruments executed and multiple-party accounts opened before the effective date unless there is a clear indication of a contrary intent.

(Apr. 27, 2001, D.C. Law 13-292, § 202, 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-501.

Editor's notes. — Uniform Law: This section is based upon § 12 of the Uniform Simultaneous Death Act (1993 Act).

CHAPTER 6. NONPROBATE TRANSFERS ON DEATH; UNIFORM LAW.

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Subchapter I. Provisions Relating to Effect of Death.

§ 19-601.01. Nonprobate transfers on death.

(a) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary. This section includes a written provision that:

(1) Money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates, either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later;

(2) Money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(3) Any property controlled by or owned by the decedent before death which is the subject of the instrument passes to a person the decedent

designates, either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

(b) This section does not limit rights of creditors under other laws of the District.

(c) This section does not determine the validity of, or priority among, any inconsistent provisions in documents specified in subsection (a) of this section.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — Law 13-292, the "Omnibus Trusts and Estates Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-298, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 26, 2001, it was assigned Act No. 13-599 and transmitted to both Houses of Congress for its review. D.C. Law 13-292 became effective on April 27, 2001.

Editor's notes. — Uniform Law: This section is based upon § 101 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

CASE NOTES

In general.

A constructive delivery must be as perfect as the circumstances reasonably permit; thus, if the donor has done all that normally could be done under the circumstances to put the intended donee in control of the personal property, there has been a delivery to that person. In re Estate of Walker, 890 A.2d 216, 2006 D.C. App. LEXIS 3 (2006).

The delivery must be such as to vest the donee with control and dominion over the property, but this requirement must be tailored to suit the circumstances of the case. In re Estate of Walker, 890 A.2d 216, 2006 D.C. App. LEXIS 3 (2006).

Delivery may be actual or constructive with respect to a valid inter vivos gift. In re Estate of Walker, 890 A.2d 216, 2006 D.C. App. LEXIS 3 (2006).

To establish by clear and convincing evidence that depositor of funds in joint account made a valid inter vivos gift to surviving account holder, holder was required to overcome the presumption that the joint bank account was created for owner's convenience and to satisfy the requisites of a valid inter vivos gift: delivery, intention on the part of the donor to make a gift, and absolute disposition of the subject of the gift. In re Estate of Walker, 890 A.2d 216, 2006 D.C. App. LEXIS 3 (2006).

When the claim of an inter vivos gift comes after the alleged donor has died, the gift must be proven by clear and convincing evidence. In re Estate of Walker, 890 A.2d 216, 2006 D.C. App. LEXIS 3 (2006).

The presumption that joint account was opened for the convenience of party depositing all funds puts the person who is claiming that the account carried a right of survivorship in the position of claiming that the account funds were an inter vivos gift, and the presumption shifts the burden of proof to that person. In re Estate of Walker, 890 A.2d 216, 2006 D.C. App. LEXIS 3 (2006).

Remand to consider effect the Nonprobate Transfers on Death Act had on determination of ownership of Maryland joint bank accounts was required, in probate proceeding in which brother of decedent and decedent's estate both claimed ownership of joint bank accounts; Act took effect three days before the trial court rendered its decision, the Act applied to accounts that existed before its effective date, neither party addressed the applicability of the Act, and the Act provided that transfers of funds through right of survivorship provisions of joint bank accounts were non testamentary and not subject to estate administration. In re Estate of Blake, 856 A.2d 1151, 2004 D.C. App. LEXIS 433 (2004).

Subchapter II. Multiple-Person Accounts.

PART A.

DEFINITIONS AND GENERAL PROVISIONS.

§ 19-602.01. Definitions.

For the purposes of this subchapter, the term:

(1) "Account" means a contract of deposit between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, and share account.

(2) "Agent" means a person authorized to make account transactions for a party.

(3) "Beneficiary" means a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee.

(3A) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(4) "Financial institution" means an organization authorized to do business under state, District, or federal laws relating to financial institutions, and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

(5) "Multiple-party account" means an account payable on request to one or more of 2 or more parties, whether or not a right of survivorship is mentioned.

(6) "Party" means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.

(7) "Payment" of sums on deposit includes withdrawal, payment to a party or third person pursuant to check or other request, and a pledge of sums on deposit by a party, or a set-off, reduction, or other disposition of all or part of an account pursuant to a pledge.

(8) "POD designation" means the designation of:

(A) A beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries, or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries; or

(B) A beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

(9) "Receive," as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established, but if the terms of the account require notice at a particular place, in the place required.

(10) "Request" means a request for payment complying with all terms of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but, for purposes of this subchapter, if terms of the account condition payment on advance notice, a request for payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for payment.

(11) "Sums on deposit" means the balance payable on an account, including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of death of a party.

(12) "Terms of the account" includes the deposit agreement and other terms and conditions, including the form, of the contract of deposit.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087; Apr. 4, 2006, D.C. Law 16-79, § 5(p), 53 DCR 1035.)

Effect of amendments. — D.C. Law 16-79 added par. (3A).

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 19-101.02.

Editor's notes. — Uniform Law: This section is based upon § 201 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-602.02. Limitation on scope of subchapter.

This subchapter does not apply to:

(1) An account established for a partnership, joint venture, or other organization for a business purpose;

(2) An account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization; or

(3) A fiduciary or trust account in which the relationship is established other than by the terms of the account.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Editor's notes. — Uniform Law: This section is based upon § 202 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-602.03. Types of account; existing accounts.

(a) An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject to section § 19-602.12(c), either a single-party account or a multiple-party account may have a POD designation, an agency designation, or both.

(b) An account established before, on, or after the effective date of this chapter [April 27, 2001], whether in the form prescribed in section 19-602.04 or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship, and with or without a POD designation

or an agency designation, within the meaning of this subchapter, and is governed by this subchapter.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Editor's notes. — Uniform Law: This section is based upon § 203 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

CASE NOTES

In general.

Remand to consider effect the Nonprobate Transfers on Death Act had on determination of ownership of Maryland joint bank accounts was required, in probate proceeding in which brother of decedent and decedent's estate both claimed ownership of joint bank accounts; Act took effect three days before the trial court rendered its decision, the Act applied to accounts that existed before its effective date, neither party addressed the applicability of the Act, and the Act provided that transfers of funds through right of survivorship provisions of joint bank accounts were non testamentary and not subject to estate administration. In re Estate of Blake, 856 A.2d 1151, 2004 D.C. App. LEXIS 433 (2004).

§ 19-602.04. Forms.

(a) A contract of deposit that contains provisions in substantially the following form establishes the type of account provided, and the account is governed by the provisions of this subchapter applicable to an account of that type:

"UNIFORM SINGLE-OR MULTIPLE-PARTY ACCOUNT FORM

"PARTIES [Name one or more parties]: _____ _____ _____ _____

"OWNERSHIP [Select one and initial]:

"_____ _____ SINGLE-PARTY ACCOUNT

"_____ _____ MULTIPLE-PARTY ACCOUNT

"Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent.

"RIGHTS AT DEATH [Select one and initial]:

"_____ _____ SINGLE-PARTY ACCOUNT

"At death of party, ownership passes as part of party's estate.

"_____ _____ SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION

"[Name one or more beneficiaries]:

"At death of party, ownership passes to POD beneficiaries and is not part of party's estate.

"_____ _____ MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

"At death of party, ownership passes to surviving parties.

"_____ _____ MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON DEATH) DESIGNATION

"[Name one or more beneficiaries]: _____ _____ _____ _____

"At death of last surviving party, ownership passes to POD beneficiaries and is not part of last surviving party's estate.

"_____ _____ MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

"At death of party, deceased party's ownership passes as part of deceased party's estate. AGENCY (POWER OF ATTORNEY) DESIGNATION [Optional]
"Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries.
"[To add agency designation to account, name one or more agents]:
"_____ _____ _____ _____
"[Select one and initial]:
"_____ _____ AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES
"_____ _____ AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES"

(b) A contract of deposit that does not contain provisions in substantially the form provided in subsection (a) of this section is governed by the provisions of this subchapter applicable to the type of account that most nearly conforms to the depositor's intent.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Editor's notes. — Uniform Law: This section is based upon § 204 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-602.05. Designation of agent.

(a) By a writing signed by all parties, the parties may designate as agent of all parties on an account a person other than a party.

(b) Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent's authority survives disability and incapacity. The agent may act for an incapacitated party or a party with a disability until the authority of the agent is terminated.

(c) Death of the sole party or last surviving party terminates the authority of an agent.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087; Apr. 24, 2007, D.C. Law 16-305, § 33(a), 53 DCR 6198.)

Effect of amendments. — D.C. Law 16-305, in subsec. (b), substituted "an incapacitated party or a party with a disability" for "a disabled or incapacitated party".

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Legislative history of Law 16-305. — Law 16-305, the "People First Respectful Language Modernization Act of 2006", was introduced in Council and assigned Bill No. 16-664, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 17, 2006, it was assigned Act No. 16-437 and transmitted to both Houses of Congress for its review. D.C. Law 16-305 became effective on April 24, 2007.

Editor's notes. — Uniform Law: This section is based upon § 205 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-602.06. Applicability of subchapter.

The provisions of part B concerning beneficial ownership as between parties or as between parties and beneficiaries apply only to controversies between

those persons and their creditors and other successors, and do not apply to the right of those persons to payment as determined by the terms of the account. Part C governs the liability and set-off rights of financial institutions that make payments pursuant to it.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Editor's notes. — Uniform Law: This section is based upon § 206 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

PART B.

OWNERSHIP AS BETWEEN PARTIES AND OTHERS.

§ 19-602.11. Ownership during lifetime.

(a) For the purposes of this section, the term "net contribution" of a party means the sum of all deposits to an account made by or for the party, less all payments from the account made to or for the party which have not been paid to or applied to the use of another party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance. The term "net contribution" includes deposit life insurance proceeds added to the account by reason of death of the party whose net contribution is in question.

(b) During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent. As between parties either married to or domestic partners of each other, in the absence of proof otherwise, the net contribution of each is presumed to be an equal amount.

(c) A beneficiary in an account having a POD designation has no right to sums on deposit during the lifetime of any party.

(d) An agent in an account with an agency designation has no beneficial right to sums on deposit.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087; Apr. 4, 2006, D.C. Law 16-79, § 5(q), 53 DCR 1035.)

Effect of amendments. — D.C. Law 16-79, in subsec. (b), substituted "As between parties either married to or domestic partners of each other," for "As between parties married to each other,".

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 19-101.02.

Editor's notes. — Uniform Law: This section is based upon § 211 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-602.12. Rights at death.

(a) Except as otherwise provided in this subchapter, on death of a party sums on deposit in a multiple-party account belong to the surviving party or

parties. If 2 or more parties survive and one is the surviving spouse or surviving domestic partner of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section 19-602.11 belongs to the surviving spouse or surviving domestic partner. If 2 or more parties survive and none is the surviving spouse or surviving domestic partner of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section 19-602.11 belongs to the surviving parties in equal shares, and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under section 19-602.11, and the right of survivorship continues between the surviving parties.

(b) In an account with a POD designation:

(1) On death of one of 2 or more parties, the rights in sums on deposit are governed by subsection (a) of this section.

(2) On death of the sole party or the last survivor of 2 or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If 2 or more beneficiaries survive, sums on deposit belong to them in equal and undivided shares, and there is no right of survivorship in the event of death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last surviving party.

(c) Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under section 19-602.11 is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For the purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

(d) The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death, or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087; Apr. 4, 2006, D.C. Law 16-79, § 5(r), 53 DCR 1035.)

Effect of amendments. — D.C. Law 16-79, in subsec. (a), substituted "surviving spouse or surviving domestic partner" for "surviving spouse".

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 19-101.02.

Editor's notes. — Uniform Law: This section is based upon § 212 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

CASE NOTES

In General.

The presumption that joint account was opened for the convenience of party depositing all funds is merely a judicial inference as to probable intent and may be overcome by showing that depositor intended to give joint owner a present interest in the joint savings account at the time she established it. In re Estate of Walker, 890 A.2d 216, 2006 D.C. App. LEXIS 3 (2006).

Where a party opens a joint account for herself and another without consideration, the account is presumed opened for the convenience of that party; this convenience account presumption always applies where the funds were deposited by only one of the parties, even where the printed bank card signed by the parties recites a right of survivorship. In re Estate of Walker, 890 A.2d 216, 2006 D.C. App. LEXIS 3 (2006).

Presumption existed that joint bank account funded by only one account holder was one of convenience for that holder. In re Estate of Walker, 890 A.2d 216, 2006 D.C. App. LEXIS 3 (2006).

Surviving owner of joint bank account bore the burden of establishing an inter vivos gift from depositor by clear and convincing evidence, where she deposited all funds. In re Estate of Walker, 890 A.2d 216, 2006 D.C. App. LEXIS 3 (2006).

§ 19-602.13. Alteration of rights.

(a) Rights at death under section 19-602.12 are determined by the type of account at the death of a party. The type of account may be altered by written notice given by a party to the financial institution to change the type of account or to stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.

(b) A right of survivorship arising from the express terms of the account, section 19-602.12, or a POD designation, may not be altered by will.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Editor's notes. — Uniform Law: This section is based upon § 213 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-602.14. Accounts and transfers nontestamentary.

A transfer resulting from the application of section 19-602.12 is effective by reason of the terms of the account involved and this subchapter and is not testamentary or subject to estate administration.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Editor's notes. — Uniform Law: This section is based upon § 214 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-602.15. Community property and tenancy by the entireties.

(a) A deposit of community property in an account does not alter the community character of the property or community rights in the property, but a right of survivorship between parties married to or domestic partners of each

other arising from the express terms of the account or section 19-602.12 may not be altered by will.

(b) This subchapter does not affect the law governing tenancy by the entireties.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087; Apr. 4, 2006, D.C. Law 16-79, § 5(s), 53 DCR 1035.)

Effect of amendments. — D.C. Law 16-79, in subsec. (a), substituted "married to or domestic partners of each other" for "married to each other".

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 19-101.02.

Editor's notes. — Uniform Law: This section is based upon § 216 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

PART C.

PROTECTION OF FINANCIAL INSTITUTIONS.

§ 19-602.21. Authority of financial institution.

A financial institution may enter into a contract of deposit for a multiple-party account to the same extent it may enter into a contract of deposit for a single-party account, and may provide for a POD designation and an agency designation in either a single-party account or a multiple-party account. A financial institution need not inquire as to the source of a deposit to an account or as to the proposed application of a payment from an account.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Editor's notes. — Uniform Law: This section is based upon § 221 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-602.22. Payment on multiple-party account.

A financial institution, on request, may pay sums on deposit in a multiple-party account to:

(1) One or more of the parties, whether or not another party has a disability, is incapacitated, or deceased when payment is requested and whether or not the party making the request survives another party; or

(2) The personal representative, if any, or, if there is none, the heirs or devisees of a deceased party, if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account, either as a party or beneficiary, unless the account is without right of survivorship under section 19-602.12.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087; Apr. 24, 2007, D.C. Law 16-305, § 33(b), 53 DCR 6198.)

Effect of amendments. — D.C. Law 16-305, in par. (1), substituted "has a disability" for "is disabled".

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 19-602.05.

Editor's notes. — Uniform Law: This section is based upon § 222 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-602.23. Payment on POD designation.

A financial institution, on request, may pay sums on deposit in an account with a POD designation to:

(1) One or more of the parties, whether or not another party has a disability, is incapacitated, or deceased when the payment is requested and whether or not a party survives another party;

(2) The beneficiary or beneficiaries, if proof of death is presented to the financial institution showing that the beneficiary or beneficiaries survived all persons named as parties; or

(3) The personal representative, if any, or, if there is none, the heirs or devisees of a deceased party, if proof of death is presented to the financial institution showing that the deceased party was the survivor of all other persons named on the account, either as a party or beneficiary.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087; Apr. 24, 2007, D.C. Law 16-305, § 33(c), 53 DCR 6198.)

Effect of amendments. — D.C. Law 16-305, in par. (1), substituted "has a disability" for "is disabled".

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 19-602.05.

Editor's notes. — Uniform Law: This section is based upon § 223 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-602.24. Payment to designated agent.

A financial institution, on request of an agent under an agency designation for an account, may pay to the agent sums on deposit in the account, whether or not a party has a disability, is incapacitated, or deceased when the request is made or received, and whether or not the authority of the agent terminates on the disability or incapacity of a party.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087; Apr. 24, 2007, D.C. Law 16-305, § 33(d), 53 DCR 6198.)

Effect of amendments. — D.C. Law 16-305 substituted "has a disability, is" for "is disabled".

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 19-602.05.

Editor's notes. — Uniform Law: This section is based upon § 224 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-602.25. Payment to minor.

If a financial institution is required or permitted to make payment pursuant

to this subchapter to a minor designated as a beneficiary, payment may be made pursuant to Chapter 3 of Title 21 of the District of Columbia Code.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Editor's notes. — Uniform Law: This section is based upon § 225 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-602.26. Discharge.

(a) Payment made pursuant to this subchapter in accordance with the terms of the account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors. Payment may be made whether or not a party, beneficiary, or agent has a disability, is incapacitated, or deceased when payment is requested, received, or made.

(b) Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not be permitted, and the financial institution has had a reasonable opportunity to act on it when the payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in a request for payment if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

(c) A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.

(d) Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087; Apr. 24, 2007, D.C. Law 16-305, § 33(e), 53 DCR 6198.)

Effect of amendments. — D.C. Law 16-305, in subsec. (a), substituted "has a disability, is" for "is disabled".

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 19-602.05.

Editor's notes. — Uniform Law: This section is based upon § 226 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-602.27. Set-off.

Without qualifying any other statutory right to set-off or lien and subject to

any contractual provision, if a party is indebted to a financial institution, the financial institution has a right to set-off against the account. The amount of the account subject to set-off is the proportion to which the party is, or immediately before death was, beneficially entitled under section 19-602.11 or, in the absence of proof of that proportion, an equal share with all parties.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Editor's notes. — Uniform Law: This section is based upon § 227 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

Subchapter III. Uniform Transfers on Death Security Registration.

§ 19-603.01. Definitions.

For the purposes of this subchapter, the term:

(1) "Beneficiary form" means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) "Register," including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(3) "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(4) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(5) "Security account" means:

(A) A reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; or

(B) A cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Editor's notes. — Uniform Law: This section is based upon § 301 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-603.02. Registration in beneficiary form; sole or joint tenancy ownership.

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by 2 or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form, and not as tenants in common.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Editor's notes. — Uniform Law: This section is based upon § 302 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-603.03. Registration in beneficiary form; applicable law.

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Editor's notes. — Uniform Law: This section is based upon § 303 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-603.04. Origination of registration in beneficiary form.

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Editor's notes. — Uniform Law: This section is based upon § 304 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-603.05. Form of registration in beneficiary form.

Registration in beneficiary form may be shown by the words "transfer on

death" or the abbreviation "TOD," or by the words "pay on death" or the abbreviation "POD," after the name of the registered owner and before the name of a beneficiary.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Editor's notes. — Uniform Law: This section is based upon § 305 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-603.06. Effect of registration in beneficiary form.

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Editor's notes. — Uniform Law: This section is based upon § 306 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-603.07. Ownership on death of owner.

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survive the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Editor's notes. — Uniform Law: This section is based upon § 307 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-603.08. Protection of registering entity.

(a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this subchapter.

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this subchapter.

(c) A registering entity is discharged from all claims to a security by the

estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with section 19-603.07 and does so in good faith reliance (1) on the registration, (2) on this subchapter, and (3) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this subchapter do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this subchapter.

(d) The protection provided by this subchapter to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Editor's notes. — Uniform Law: This section is based upon § 308 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-603.09. Nontestamentary transfer on death.

(a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this subchapter and is not testamentary.

(b) This subchapter does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of the District.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Editor's notes. — Uniform Law: This section is based upon § 309 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-603.10. Terms, conditions, and forms for registration.

(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (1) for registrations in beneficiary form, and (2) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes." This designation substitutes a deceased beneficiary's descendants who survive the owner for a

beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(b) The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(1) Sole owner-sole beneficiary: John S Brown TOD (or POD) John S Brown Jr.

(2) Multiple owners-sole beneficiary: John S Brown Mary B Brown JT TEN TOD John S Brown Jr.

(3) Multiple owners-primary and secondary (substituted) beneficiaries: John S Brown Mary B Brown JT TEN TOD John S Brown Jr SUB BENE Peter Q Brown or John S Brown Mary B Brown JT TEN TOD John S Brown Jr LDPS.

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Editor's notes. — Uniform Law: This section is based upon § 310 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

§ 19-603.11. Application of subchapter.

This subchapter applies to registrations of securities in beneficiary form made before or after the effective date of this act [April 27, 2001], by decedents dying on or after the effective date of this act [April 27, 2001].

(Apr. 27, 2001, D.C. Law 13-292, § 302(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-601.01.

Editor's notes. — Uniform Law: This section is based upon § 405 of the Uniform Nonprobate Transfers on Death Act (1991 Act).

CHAPTER 7. ESCHEAT.

Sec.
19-701. Escheatment generally.

§ 19-701. Escheatment generally.

(a) Where there is no surviving spouse, surviving domestic partner, or relations of the intestate within the fifth degree, reckoned by counting down from the common ancestor to the more remote, the surplus of real and personal property escheats to the District of Columbia to be used by the Mayor of the District of Columbia for the benefit of the poor. All cash, including real or personal property reduced to cash, received or obtained by the District pursuant to this section shall be transferred at regular intervals to the Department of Human Services for uses consistent with the emergency assistance grants described in § 4-753.01(e).

(b) For the purposes of this section, the term "domestic partner" shall have the same meaning as provided in § 32-701(3).

(Sept. 14, 1965, 79 Stat. 701, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 566; Pub. L. 91-358, title I, § 148(1); Apr. 30, 1988, D.C. Law 7-104,§ 5(c), 35 DCR 147; Apr. 4, 2006, D.C. Law 16-79, § 5(t), 53 DCR 1035; Sept. 24, 2010, D.C. Law 18-223, § 5042, 57 DCR 6242.)

Prior Codifications. — 1981 Ed., § 19-701. 1973 Ed., § 19-701.

Effect of amendments. — D.C. Law 16-79 rewrote section which had read as follows: "Where there is no surviving spouse or relations of the intestate within the fifth degree, reckoned by counting down from the common ancestor to the more remote, the surplus of real and personal property escheats to the District of Columbia to be used by the Mayor of the District of Columbia for the benefit of the poor."

D.C. Law 18-223, in subsec. (a), added the last sentence.

Emergency legislation. — For temporary (90 day) amendment of section, see § 5042 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 7-104. — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 19-101.02.

Legislative history of Law 18-223. — Law 18-223, the "Fiscal Year 2011 Budget Support Act of 2010", was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

Short title. — Short title: Section 5041 of D.C. Law 18-223 provided that subtitle E of title V of the act may be cited as the "Emergency Housing Assistance Act of 2010".

Mayor's Orders. — Escheated Estates Fund Application Screening Committee established: See Mayor's Order 83-285, December 7, 1983.

Amendment of Mayor's Order 81-39, Escheated Estates Fund: See Mayor's Order 85-71, May 24, 1985, as amended by Mayor's Order 87-188, August 6, 1987.

Amendment of establishment of Escheated Estates Fund Application Screening Committee: See Mayor's Order 86-128, August 8, 1986.

Representation of District in probate and escheat cases: See Mayor's Order 85-190, December 3, 1985.

Transfer of the Escheated Estates Fund, Delegation of Authority, and Rescission of Previous Mayor's Orders, see Mayor's Order 2007-238, November 2, 2007 (55 DCR 177).

Editor's notes. — Age of majority: Section 2 of the Act of July 22, 1976, D.C. Law 1-75,

provided: "Notwithstanding any rule of common or other law to the contrary in effect on the effective date of this act, the age of majority in the District of Columbia shall be eighteen years of age, except that this act shall not affect any common law or statutory right to child support."

CASE NOTES

In general.

Testator's effort to disinherit his caveator brothers and their heirs at law was ineffective where he made no gift over of the forfeited estate and made no other disposition of such estate so that those whom testator determined to defeat of their inheritance would take forfeited estate under statute of descent and distribution and District of Columbia would take nothing through escheatment. D.C. Code § 19-701. Wilkes v. Freer, 271 F. Supp. 602, 1967 U.S. Dist. LEXIS 7184 (D.D.C1967).

Rules of construction against interpretation resulting in intestacy or escheat were not dispositive before extrinsic evidence was taken to show testator's intent. District of Columbia v. Estate of Parsons, 590 A.2d 133, 1991 D.C. App. LEXIS 91 (1991).

CHAPTER 9. STATUTORY RULE AGAINST PERPETUITIES; UNIFORM LAW.

Sec.
19-901. Statutory rule against perpetuities.
19-902. When nonvested property interest or power of appointment is created.
19-903. Reformation.
19-904. Exclusions from statutory rule against perpetuities.
19-905. Prospective application.
19-906. Supersession.
19-907. Uniformity of application and construction.

§ 19-901. Statutory rule against perpetuities.

(a) A nonvested property interest is invalid unless:

(1) When the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(2) The interest either vests or terminates within 90 years after its creation.

(b) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(1) When the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than 21 years after the death of an individual then alive; or

(2) The condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(c) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(1) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

(2) The power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under subsection (a)(1), (b)(1), or (c)(1) of this section, the possibility that a child will be born to an individual after the individual's death is disregarded.

(e) If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument (1) seeks to disallow the vesting or termination of any interest or trust beyond, (2) seeks to postpone the vesting or termination of any interest or trust until, or (3) seeks to operate in effect in any similar fashion upon, the later of (A) the expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (B) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives.

(Apr. 27, 2001, D.C. Law 13-292, § 402(b), 48 DCR 2087.)

Legislative history of Law 13-292. — Law 13-292, the "Omnibus Trusts and Estates Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-298, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 26, 2001, it was assigned Act No. 13-599 and transmitted to both Houses of Congress for its review. D.C. Law 13-292 became effective on April 27, 2001.

Editor's notes. — Uniform Law: This section is based upon § 1 of the Uniform Statutory Rule Against Perpetuities Act.

§ 19-902. When nonvested property interest or power of appointment is created.

(a) Except as provided in subsections (b) and (c) of this section and in section 19-905(a), the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(b) For purposes of this chapter, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of a nonvested property interest or a property interest subject to a power of appointment described in section 19-901(b) or (c), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(c) For purposes of this chapter, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

(Apr. 27, 2001, D.C. Law 13-292, § 402(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-901.

Editor's notes. — Uniform Law: This section is based upon § 2 of the Uniform Statutory Rule Against Perpetuities Act.

§ 19-903. Reformation.

Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the 90 years allowed by section 19-901(a)(2), (b)(2), or (c)(2) if:

(1) A nonvested property interest or a power of appointment becomes invalid under section 19-901;

(2) A class gift is not but might become invalid under section 19-901 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) A nonvested property interest that is not validated by section 19-901(a)(1) can vest but not within 90 years after its creation.

(Apr. 27, 2001, D.C. Law 13-292, § 402(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-901.

Editor's notes. — Uniform Law: This section is based upon § 3 of the Uniform Statutory Rule Against Perpetuities Act.

§ 19-904. Exclusions from statutory rule against perpetuities.

(a) Section 19-901 does not apply to:

(1) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

(A) A premarital or postmarital agreement;

(B) A separation or divorce settlement;

(C) A spouse or domestic partner's election under section 19-113;

(D) A similar arrangement arising out of a prospective, existing, or previous marital relationship or domestic partnership relationship between the parties;

(E) A contract to make or not to revoke a will or trust;

(F) A contract to exercise or not to exercise a power of appointment;

(G) A transfer in satisfaction of a duty of support; or

(H) A reciprocal transfer;

(2) A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

(3) A power to appoint a fiduciary;

(4) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(5) A nonvested property interest held by a charity, government, or governmental agency or subdivision;

(6) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit- sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries, spouses, or domestic partners, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries, spouses, or domestic partners, the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary, spouse, or domestic partner;

(7) A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of the District of Columbia;

(8) A gift of a present interest or devise to charitable uses;

(9) In accordance with section 43-113, a grant, donation, or bequest for the embellishment, preservation, renewal, or repair of any tomb, monument, gravestone, or other structure, fence, railing, or other enclosure in or around any cemetery lot, or for the planting and cultivation of any trees, shrubs, flowers, or plants in or around any cemetery lot, according to the terms of such grant, donation, or bequest; or

(10) A trust in which the governing instrument states that the provisions of this chapter do not apply to the trust and under which the trustee, or other

person to whom the power is properly granted or delegated, has the power under the governing instrument, applicable statute, or common law to hold, sell, lease, or mortgage property for any period of time beyond the period that is required for an interest created under the governing instrument to vest.

(b) For the purposes of this section, the term:

(1) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(2) "Domestic partnership" shall have the same meaning as provided in § 32-701(4).

(Apr. 27, 2001, D.C. Law 13-292, § 402(b), 48 DCR 2087; Apr. 4, 2006, D.C. Law 16-79, § 5(u), 53 DCR 1035.)

Effect of amendments. — D.C. Law 16-79 designated the existing text as subsec. (a); added subsec. (b); and rewrote subsecs. (a)(1)(C), (a)(1)(D) and (a)(6).

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-901.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 19-101.02.

Editor's notes. — Uniform Law: This section is based upon § 4 of the Uniform Statutory Rule Against Perpetuities Act.

§ 19-905. Prospective application.

(a) Except as extended by subsection (b) of this section, this chapter applies to a nonvested property interest or a power of appointment that is created on or after the effective date of this chapter [April 27, 2001]. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(b) If a nonvested property interest or a power of appointment was created before the effective date of this chapter [April 27, 2001] and is determined in a judicial proceeding, commenced on or after the effective date of this chapter [April 27, 2001], to violate the District of Columbia's rule against perpetuities as that rule existed before the effective date of this chapter [April 27, 2001], a court, upon the petition of an interested person, may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

(Apr. 27, 2001, D.C. Law 13-292, § 402(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-901.

Editor's notes. — Uniform Law: This section is based upon § 5 of the Uniform Statutory Rule Against Perpetuities Act.

§ 19-906. Supersession.

This chapter supersedes the rule of the common law known as the rule against perpetuities.

(Apr. 27, 2001, D.C. Law 13-292, § 402(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-901.

Editor's notes. — Uniform Law: This section is based upon § 9 of the Uniform Statutory Rule Against Perpetuities Act.

§ 19-907. Uniformity of application and construction.

In applying and construing this Uniform Act [this chapter], consideration must be given to the need to promote uniformity of the law with respect to the subject matter among states enacting it.

(Apr. 27, 2001, D.C. Law 13-292, § 402(b), 48 DCR 2087.)

Legislative history of Law 13-292. — For D.C. Law 13-292, see notes following § 19-901.

Editor's notes. — Uniform Law: This section is based upon § 7 of the Uniform Statutory Rule Against Perpetuities Act.

Chapter 10. [Reserved].

CHAPTER 11. CUSTODIAL TRUSTS; UNIFORM LAW.

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§ 19-1101. Definitions.

For the purposes of this chapter, the term:

(1) "Adult" means an individual who is at least 18 years of age.

(2) "Beneficiary" means an individual for whom property has been transferred to or held under a declaration of trust by a custodial trustee for the individual's use and benefit under this chapter.

(3) "Conservator" means a person appointed or qualified by a court to manage the estate of an individual or a person legally authorized to perform substantially the same functions.

(4) "Court" means the Superior Court of the District of Columbia.

(5) "Custodial trust property" means an interest in property transferred to or held under a declaration of trust by a custodial trustee under this chapter and the income from and proceeds of that interest.

(6) "Custodial trustee" means a person designated as trustee of a custodial trust under this chapter or a substitute or successor to the person designated.

(6A) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(7) "Guardian" means a person appointed or qualified by a court as a guardian of an individual, including a limited guardian, but not a person who is only a guardian ad litem.

(8) "Incapacitated" means lacking the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, minority, or other disabling cause.

(9) "Legal representative" means a personal representative or conservator.

(10) "Member of the beneficiary's family" means a beneficiary's spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

(12) "Personal representative" means an executor, administrator, or special administrator of a decedent's estate, a person legally authorized to perform substantially the same functions, or a successor to any of them.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(14) "Transferor" means a person who creates a custodial trust by transfer or declaration.

(15) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

(July 23, 2002, D.C. Law 14-177, § 2(b), 49 DCR 5092; Sept. 12, 2008, D.C. Law 17-231, § 21(a), 55 DCR 6758.)

Effect of amendments. — D.C. Law 17-231 added par. (6A).

Legislative history of Law 14-177. — Law 14-177, the "Uniform Custodial Trust Act of 2002", was introduced in Council and assigned Bill No. 14-210, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on April 9, 2002, and May 7, 2002, respectively. Signed by the Mayor on May 20, 2002, it was assigned Act No. 14-370 and transmitted to both Houses of Congress for its review. D.C. Law 14-177 became effective on July 23, 2002.

Legislative history of Law 17-231. — Law 17-231, the "Omnibus Domestic Partnership Equality Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-135, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on June 6, 2008, it was assigned Act No. 17-403 and transmitted to both Houses of Congress for its review. D.C. Law 17-231 became effective on September 12, 2008.

§ 19-1102. Custodial trust; general.

(a) A person may create a custodial trust of property by a written transfer of the property to another person, evidenced by registration or by other instrument of transfer, executed in any lawful manner, naming as beneficiary, an individual who may be the transferor, in which the transferee is designated, in substance, as custodial trustee under this chapter.

(b) A person may create a custodial trust of property by a written declaration, evidenced by registration of the property or by other instrument of declaration executed in any lawful manner, describing the property and naming as beneficiary an individual other than the declarant, in which the declarant as titleholder is designated, in substance, as custodial trustee under this chapter. A registration or other declaration of trust for the sole benefit of the declarant is not a custodial trust under this chapter.

(c) Title to custodial trust property is in the custodial trustee and the beneficial interest is in the beneficiary.

(d) Except as provided in subsection (e) of this section, a transferor may not terminate a custodial trust.

(e) The beneficiary, if not incapacitated, or the conservator of an incapacitated beneficiary, may terminate a custodial trust by delivering to the custodial trustee a writing signed by the beneficiary or conservator declaring the

termination. If not previously terminated, the custodial trust terminates on the death of the beneficiary.

(f) Any person may augment existing custodial trust property by the addition of other property pursuant to this chapter.

(g) The transferor may designate, or authorize the designation of, a successor custodial trustee in the trust instrument.

(h) This chapter does not displace or restrict other means of creating trusts. A trust whose terms do not conform to this chapter may be enforceable according to its terms under other law.

(July 23, 2002, D.C. Law 14-177, § 2(b), 49 DCR 5092.)

Legislative history of Law 14-177. — For Law 14-177, see notes following § 19-1101.

§ 19-1103. Custodial trustee for future payment or transfer.

(a) A person having the right to designate the recipient of property payable or transferable upon a future event may create a custodial trust upon the occurrence of the future event by designating in writing the recipient, followed in substance by: "as custodial trustee for _____ (name of beneficiary) under the District of Columbia's Uniform Custodial Trust Act."

(b) Persons may be designated as substitute or successor custodial trustees to whom the property must be paid or transferred in the order named if the first designated custodial trustee is unable or unwilling to serve.

(c) A designation under this section may be made in a will, a trust, a deed, a multiple-party account, an insurance policy, an instrument exercising a power of appointment, or a writing designating a beneficiary of contractual rights. If the designation is not made in one of the foregoing ways, the designation must be registered with or delivered to the fiduciary, payor, issuer, or obligor of the future right in order to be effective.

(July 23, 2002, D.C. Law 14-177, § 2(b), 49 DCR 5092.)

Legislative history of Law 14-177. — For Law 14-177, see notes following § 19-1101.

§ 19-1104. Form and effect of receipt and acceptance by custodial trustee; jurisdiction.

(a) Obligations of a custodial trustee, including the obligation to follow directions of the beneficiary, arise under this chapter upon the custodial trustee's acceptance, express or implied, of the custodial trust property.

(b) The custodial trustee's acceptance may be evidenced by a writing stating in substance:

CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE

I, _____ (name of custodial trustee), acknowledge receipt of the custodial trust property described below or in the attached instrument and accept

the custodial trust as custodial trustee for _____ (name of beneficiary) under the District of Columbia's Uniform Custodial Trust Act. I undertake to administer and distribute the custodial trust property pursuant to the District of Columbia's Uniform Custodial Trust Act. My obligations as custodial trustee are subject to the directions of the beneficiary unless the beneficiary is designated as, is, or becomes incapacitated. The custodial trust property consists of _____.

Dated: _____

_____

(Signature of Custodial Trustee)

(c) Upon accepting custodial trust property, a person designated as custodial trustee under this chapter is subject to personal jurisdiction of the court with respect to any matter relating to the custodial trust.

(July 23, 2002, D.C. Law 14-177, § 2(b), 49 DCR 5092.)

Legislative history of Law 14-177. — For Law 14-177, see notes following § 19-1101.

§ 19-1105. Transfer to custodial trustee by fiduciary or obligor; facility of payment.

(a) Unless otherwise directed by an instrument designating a custodial trustee pursuant to section 19-1103, a person, including a fiduciary other than a custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a conservator may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds $20,000, the transfer is not effective unless authorized by the court.

(b) A written acknowledgment of delivery, signed by a custodial trustee, is a sufficient receipt and discharge for property transferred to the custodial trustee pursuant to this section.

(July 23, 2002, D.C. Law 14-177, § 2(b), 49 DCR 5092.)

Legislative history of Law 14-177. — For Law 14-177, see notes following § 19-1101.

§ 19-1106. Multiple beneficiaries; separate custodial trusts; survivorship.

(a) Beneficial interests in a custodial trust created for multiple beneficiaries are deemed to be separate custodial trusts of equal undivided interests for each beneficiary. Except in a transfer or declaration for use and benefit of spouses or domestic partners, for whom survivorship is presumed, a right of survivorship does not exist unless the instrument creating the custodial trust specifically provides for survivorship.

(b) Custodial trust property held under this chapter by the same custodial

trustee for the use and benefit of the same beneficiary may be administered as a single custodial trust.

(c) A custodial trustee of custodial trust property held for more than one beneficiary shall separately account to each beneficiary pursuant to sections 19-1108 and 19-1115 for the administration of the custodial trust.

(July 23, 2002, D.C. Law 14-177, § 2(b), 49 DCR 5092; Sept. 12, 2008, D.C. Law 17-231, § 21(b), 55 DCR 6758.)

Effect of amendments. — D.C. Law 17-231, in subsec. (a), substituted "spouses or domestic partners" for "husband and wife".

Legislative history of Law 14-177. — For Law 14-177, see notes following § 19-1101.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 19-1101.

§ 19-1107. General duties of custodial trustee.

(a) If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property.

(b) If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment, or retention of the custodial trust property. In the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other law restricting investments by fiduciaries. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor. If a custodial trustee has a special skill or expertise or is named custodial trustee on the basis of representation of a special skill or expertise, the custodial trustee shall use that skill or expertise.

(c) Subject to subsection (b) of this section, a custodial trustee shall take control of and collect, hold, manage, invest, and reinvest custodial trust property.

(d) A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control, separate from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is so identified if an appropriate instrument so identifying the property is recorded, and custodial trust property subject to registration is so identified if it is registered, or held in an account in the name of the custodial trustee, designated in substance: "as custodial trustee for _____ (name of beneficiary) under the District of Columbia's Uniform Custodial Trust Act."

(e) A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

(f) The exercise of a durable power of attorney for an incapacitated beneficiary is not effective to terminate or direct the administration or distribution of a custodial trust.

(July 23, 2002, D.C. Law 14-177, § 2(b), 49 DCR 5092.)

Legislative history of Law 14-177. — For Law 14-177, see notes following § 19-1101.

§ 19-1108. General powers of custodial trustee.

(a) A custodial trustee, acting in a fiduciary capacity, has all the rights and powers over custodial trust property which an unmarried adult owner has over individually owned property, but a custodial trustee may exercise those rights and powers in a fiduciary capacity only.

(b) This section does not relieve a custodial trustee from liability for a violation of section 19-1107.

(July 23, 2002, D.C. Law 14-177, § 2(b), 49 DCR 5092.)

Legislative history of Law 14-177. — For Law 14-177, see notes following § 19-1101.

§ 19-1109. Use of custodial trust property.

(a) A custodial trustee shall pay to the beneficiary or expend for the beneficiary's use and benefit so much or all of the custodial trust property as the beneficiary while not incapacitated may direct from time to time.

(b) If the beneficiary is incapacitated, the custodial trustee shall expend so much or all of the custodial trust property as the custodial trustee considers advisable for the use and benefit of the beneficiary and individuals who were supported by the beneficiary when the beneficiary became incapacitated, or who are legally entitled to support by the beneficiary. Expenditures may be made in the manner, at the time, and to the extent that the custodial trustee determines suitable and proper, without court order and without regard to other support, income, or property of the beneficiary.

(c) A custodial trustee may establish checking, savings, or other similar accounts of reasonable amounts under which either the custodial trustee or the beneficiary may withdraw funds from, or draw checks against, the accounts. Funds withdrawn from, or checks written against, the account by the beneficiary are distributions of custodial trust property by the custodial trustee to the beneficiary.

(July 23, 2002, D.C. Law 14-177, § 2(b), 49 DCR 5092.)

Legislative history of Law 14-177. — For Law 14-177, see notes following § 19-1101.

§ 19-1110. Determination of incapacity; effect.

(a) The custodial trustee shall administer the custodial trust as for an incapacitated beneficiary if:

(1) The custodial trust was created under section 19-1105;

(2) The transferor has so directed in the instrument creating the custodial trust; or

(3) The custodial trustee has determined that the beneficiary is incapacitated.

(b) A custodial trustee may determine that the beneficiary is incapacitated in reliance upon:

(1) Previous direction or authority given by the beneficiary while not incapacitated, including direction or authority pursuant to a durable power of attorney;

(2) The certificate of the beneficiary's physician; or

(3) Other persuasive evidence.

(c) If a custodial trustee for an incapacitated beneficiary reasonably concludes that the beneficiary's incapacity has ceased, or that circumstances concerning the beneficiary's ability to manage property and business affairs have changed since the creation of a custodial trust directing administration as for an incapacitated beneficiary, the custodial trustee may administer the trust as for a beneficiary who is not incapacitated.

(d) On petition of the beneficiary, the custodial trustee, or other person interested in the custodial trust property or the welfare of the beneficiary, the court shall determine whether the beneficiary is incapacitated.

(e) Absent determination of incapacity of the beneficiary under subsection (b) or (d) of this section, a custodial trustee who has reason to believe that the beneficiary is incapacitated shall administer the custodial trust in accordance with the provisions of this chapter applicable to an incapacitated beneficiary.

(f) Incapacity of a beneficiary does not terminate the custodial trust, any designation of a successor custodial trustee, rights or powers of the custodial trustee, or any immunities of third persons acting on instructions of the custodial trustee.

(July 23, 2002, D.C. Law 14-177, § 2(b), 49 DCR 5092.)

Legislative history of Law 14-177. — For Law 14-177, see notes following § 19-1101.

§ 19-1111. Exemption of third person from liability.

A third person, in good faith and without a court order, may act on instructions of, or otherwise deal with, a person purporting to make a transfer as, or purporting to act in the capacity of, a custodial trustee. In the absence of knowledge to the contrary, the third person is not responsible for determining:

(1) The validity of the purported custodial trustee's designation;

(2) The propriety of, or the authority under this chapter for, any action of the purported custodial trustee;

(3) The validity or propriety of an instrument executed or instruction given pursuant to this chapter either by the person purporting to make a transfer or declaration or by the purported custodial trustee; or

(4) The propriety of the application of property vested in the purported custodial trustee.

(July 23, 2002, D.C. Law 14-177, § 2(b), 49 DCR 5092.)

Legislative history of Law 14-177. — For Law 14-177, see notes following § 19-1101.

§ 19-1112. Liability to third person.

(a) A claim based on a contract entered into by a custodial trustee acting in a fiduciary capacity, an obligation arising from the ownership or control of custodial trust property, or a tort committed in the course of administering the custodial trust, may be asserted by a third person against the custodial trust property by proceeding against the custodial trustee in a fiduciary capacity, whether or not the custodial trustee or the beneficiary is personally liable.

(b) A custodial trustee is not personally liable to a third person:

(1) On a contract properly entered into in a fiduciary capacity unless the custodial trustee fails to reveal that capacity or to identify the custodial trust in the contract; or

(2) For an obligation arising from control of custodial trust property or for a tort committed in the course of the administration of the custodial trust unless the custodial trustee is personally at fault.

(c) A beneficiary is not personally liable to a third person for an obligation arising from beneficial ownership of custodial trust property or for a tort committed in the course of administration of the custodial trust unless the beneficiary is personally in possession of the custodial trust property giving rise to the liability or is personally at fault.

(d) Subsections (b) and (c) of this section do not preclude actions or proceedings to establish liability of the custodial trustee or beneficiary to the extent the person sued is protected as the insured by liability insurance.

(July 23, 2002, D.C. Law 14-177, § 2(b), 49 DCR 5092.)

Legislative history of Law 14-177. — For Law 14-177, see notes following § 19-1101.

§ 19-1113. Declination, resignation, incapacity, death, or removal of custodial trustee; designation of successor custodial trustee.

(a) Before accepting the custodial trust property, a person designated as custodial trustee may decline to serve by notifying the person who made the designation, the transferor, or the transferor's legal representative. If an event giving rise to a transfer has not occurred, the substitute custodial trustee designated under § 19-1103 becomes the custodial trustee, or, if a substitute custodial trustee has not been designated, the person who made the designation may designate a substitute custodial trustee pursuant to section 19-1103. In other cases, the transferor or the transferor's legal representative may designate a substitute custodial trustee.

(b) A custodial trustee who has accepted the custodial trust property may resign by:

(1) Delivering written notice to a successor custodial trustee, if any, the

beneficiary and, if the beneficiary is incapacitated, to the beneficiary's conservator, if any; and

(2) Transferring or registering, or recording an appropriate instrument relating to, the custodial trust property, in the name of, and delivering the records to, the successor custodial trustee identified under subsection (c) of this section.

(c) If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor designated under section 19-1102(g) or section 19-1103 becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not incapacitated, may designate a successor custodial trustee. If the beneficiary is incapacitated, or fails to act within 90 days after the ineligibility, resignation, death, or incapacity of the custodial trustee, the beneficiary's conservator becomes successor custodial trustee. If the beneficiary does not have a conservator or the conservator fails to act, the resigning custodial trustee may designate a successor custodial trustee.

(d) If a success or custodial trustee is not designated pursuant to subsection (c) of this section, the transferor, the legal representative of the transferor or of the custodial trustee, an adult member of the beneficiary's family, the guardian of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary, may petition the court to designate a successor custodial trustee.

(e) A custodial trustee who declines to serve or resigns, or the legal representative of a deceased or incapacitated custodial trustee, as soon as practicable, shall put the custodial trust property and records in the possession and control of the successor custodial trustee. The successor custodial trustee may enforce the obligation to deliver custodial trust property and records and becomes responsible for each item as received.

(f) A beneficiary, the beneficiary's conservator, an adult member of the beneficiary's family, a guardian of the person of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary, may petition the court to remove the custodial trustee for cause and designate a successor custodial trustee, to require the custodial trustee to furnish a bond or other security for the faithful performance of fiduciary duties, or for other appropriate relief.

(July 23, 2002, D.C. Law 14-177, § 2(b), 49 DCR 5092.)

Legislative history of Law 14-177. — For Law 14-177, see notes following § 19-1101.

§ 19-1114. Expenses, compensation, and bond of custodial trustee.

Except as otherwise provided in the instrument creating the custodial trust, in an agreement with the beneficiary, or by court order, a custodial trustee:

(1) Is entitled to reimbursement from custodial trust property for reasonable expenses incurred in the performance of fiduciary services;

(2) Has a noncumulative election, to be made no later than 6 months after

the end of each calendar year, to charge a reasonable compensation for fiduciary services performed during that year; and

(3) Need not furnish a bond or other security for the faithful performance of fiduciary duties.

(July 23, 2002, D.C. Law 14-177, § 2(b), 49 DCR 5092.)

Legislative history of Law 14-177. — For Law 14-177, see notes following § 19-1101.

§ 19-1115. Reporting and accounting by custodial trustee; determination of liability of custodial trustee.

(a) Upon the acceptance of custodial trust property, the custodial trustee shall provide a written statement describing the custodial trust property and shall thereafter provide a written statement of the administration of the custodial trust property once each year, upon request at reasonable times by the beneficiary or the beneficiary's legal representative, upon resignation or removal of the custodial trustee, and upon termination of the custodial trust. The statements must be provided to the beneficiary or to the beneficiary's legal representative, if any. Upon termination of the beneficiary's interest, the custodial trustee shall furnish a current statement to the person to whom the custodial trust property is to be delivered.

(b) A beneficiary, the beneficiary's legal representative, an adult member of the beneficiary's family, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative.

(c) A successor custodial trustee may petition the court for an accounting by a predecessor custodial trustee.

(d) In an action or proceeding under this chapter or in any other proceeding, the court may require or permit the custodial trustee or the custodial trustee's legal representative to account. The custodial trustee or the custodial trustee's legal representative may petition the court for approval of final accounts.

(e) If a custodial trustee is removed, the court shall require an accounting and order delivery of the custodial trust property and records to the successor custodial trustee and the execution of all instruments required for transfer of the custodial trust property.

(f) On petition of the custodial trustee or any person who could petition for an accounting, the court, after notice to interested persons, may issue instructions to the custodial trustee or review the propriety of the acts of a custodial trustee or the reasonableness of compensation determined by the custodial trustee for the services of the custodial trustee or others.

(July 23, 2002, D.C. Law 14-177, § 2(b), 49 DCR 5092.)

Legislative history of Law 14-177. — For Law 14-177, see notes following § 19-1101.

§ 19-1116. Limitations of action against custodial trustee.

(a) Except as provided in subsection (c) of this section, unless previously barred by adjudication, consent, or limitation, a claim for relief against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a person to whom custodial trust property is to be paid or delivered, or the legal representative of an incapacitated or deceased beneficiary or payee:

(1) Who has received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within 2 years after receipt of the final account or statement; or

(2) Who has not received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within 3 years after the termination of the custodial trust.

(b) Except as provided in subsection (c) of this section, a claim for relief to recover from a custodial trustee for fraud, misrepresentation, or concealment related to the final settlement of the custodial trust or concealment of the existence of the custodial trust, is barred unless an action or proceeding to assert the claim is commenced within 7 years after the termination of the custodial trust.

(c) A claim for relief is not barred by this section if the claimant:

(1) Is a minor, until the earlier of 2 years after the claimant becomes an adult or dies;

(2) Is an incapacitated adult, until the earliest of 2 years after the appointment of a conservator, the removal of the incapacity, or the death of the claimant; or

(3) Was an adult, now deceased, who was not incapacitated, until 2 years after the claimant's death.

(July 23, 2002, D.C. Law 14-177, § 2(b), 49 DCR 5092.)

Legislative history of Law 14-177. — For Law 14-177, see notes following § 19-1101.

§ 19-1117. Distribution on termination.

(a) Upon termination of a custodial trust, the custodial trustee shall transfer the unexpended custodial trust property:

(1) To the beneficiary, if not incapacitated or deceased;

(2) To the conservator or other recipient designated by the court for an incapacitated beneficiary; or

(3) Upon the beneficiary's death, in the following order:

(A) As last directed in a writing signed by the deceased beneficiary while not incapacitated and received by the custodial trustee during the life of the deceased beneficiary;

(B) To the survivor of multiple beneficiaries if survivorship is provided for pursuant to section 19-1106;

(C) As designated in the instrument creating the custodial trust; or

(D) To the estate of the deceased beneficiary.

(b) If, when the custodial trust would otherwise terminate, the distributee is

incapacitated, the custodial trust continues for the use and benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

(c) Death of a beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

(July 23, 2002, D.C. Law 14-177, § 2(b), 49 DCR 5092.)

Legislative history of Law 14-177. — For Law 14-177, see notes following § 19-1101.

§ 19-1118. Methods and forms for creating custodial trusts.

(a) If a transaction, including a declaration with respect to or a transfer of specific property, otherwise satisfies applicable law, the criteria of section 19-1102 are satisfied by:

(1) The execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form:

TRANSFER UNDER THE DISTRICT OF COLUMBIA'S

UNIFORM CUSTODIAL TRUST ACT

I, _____ (name of transferor or name and representative capacity if a fiduciary), transfer to _____ (name of trustee other than transferor), as custodial trustee for _____ (name of beneficiary) as beneficiary and _____ as distributee on termination of the trust in absence of direction by the beneficiary under the District of Columbia's Uniform Custodial Trust Act, the following: (Insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: _____

_____

(Signature); or

(2) The execution and the recording or giving notice of its execution to the beneficiary of an instrument in substantially the following form:

DECLARATION OF TRUST UNDER THE DISTRICT OF COLUMBIA'S

UNIFORM CUSTODIAL TRUST ACT

I, _____ (name of owner of property), declare that henceforth I hold as custodial trustee for _____ (name of beneficiary other than transferor) as beneficiary and _____ as distributee on termination of the trust in absence of direction by the beneficiary under the District of Columbia's Uniform Custodial Trust Act, the following: (Insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: _____

_____

(Signature)

(b) Customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including any of the following:

(1) Registration of a security in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance "as custodial trustee for _____ (name of beneficiary) under the District of Columbia's Uniform Custodial Trust Act";

(2) Delivery of a certificated security, or a document necessary for the transfer of an uncertificated security, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodial trustee, accompanied by an instrument in substantially the form prescribed in subsection (a)(1) of this section;

(3) Payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an account in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for _____ (name of beneficiary) under the District of Columbia's Uniform Custodial Trust Act";

(4) Registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for _____ (name of beneficiary) under the District of Columbia's Uniform Custodial Trust Act";

(5) Delivery of a written assignment to an adult other than the transferor or to a trust company whose name in the assignment is designated in substance by the words: "as custodial trustee for _____ (name of beneficiary) under the District of Columbia's Uniform Custodial Trust Act";

(6) Irrevocable exercise of a power of appointment, pursuant to its terms, in favor of a trust company, an adult other than the donee of the power, or the donee who holds the power if the beneficiary is other than the donee, whose name in the appointment is designated in substance: "as custodial trustee for _____ (name of beneficiary) under the District of Columbia's Uniform Custodial Trust Act";

(7) Delivery of a written notification or assignment of a right to future payment under a contract to an obligor which transfers the right under the contract to a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, whose name in the notification or assignment is designated in substance: "as custodial trustee for _____ (name of beneficiary) under the District of Columbia's Uniform Custodial Trust Act";

(8) Execution, delivery, and recordation of a conveyance of an interest in real property in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for _____ (name of beneficiary) under the District of Columbia's Uniform Custodial Trust Act";

(9) Issuance of a certificate of title by an agency of a state or of the United States which evidences title to tangible personal property:

(A) Issued in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for _____ (name of beneficiary) under the District of Columbia's Uniform Custodial Trust Act"; or

(B) Delivered to a trust company or an adult other than the transferor or endorsed by the transferor to that person, designated in substance: "as custodial trustee for _____ (name of beneficiary) under the District of Columbia's Uniform Custodial Trust Act"; or

(10) Execution and delivery of an instrument of gift to a trust company or an adult other than the transferor, designated in substance: "as custodial trustee for _____ (name of beneficiary) under the District of Columbia's Uniform Custodial Trust Act."

(July 23, 2002, D.C. Law 14-177, § 2(b), 49 DCR 5092.)

Legislative history of Law 14-177. — For Law 14-177, see notes following § 19-1101.

§ 19-1119. Applicable law.

(a) This chapter applies to a transfer or declaration creating a custodial trust that refers to this chapter if, at the time of the transfer or declaration, the transferor, beneficiary, or custodial trustee is a resident of or has its principal place of business in the District of Columbia or custodial trust property is located in the District of Columbia. The custodial trust remains subject to this chapter despite a later change in residence or principal place of business of the transferor, beneficiary, or custodial trustee, or removal of the custodial trust property from the District of Columbia.

(b) A transfer made pursuant to an act of another state substantially similar to this chapter is governed by the law of that state and may be enforced in the District of Columbia.

(July 23, 2002, D.C. Law 14-177, § 2(b), 49 DCR 5092.)

Legislative history of Law 14-177. — For Law 14-177, see notes following § 19-1101.

§ 19-1120. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose

to make uniform the law with respect to the subject of this chapter among states enacting it.

(July 23, 2002, D.C. Law 14-177, § 2(b), 49 DCR 5092.)

Legislative history of Law 14-177. — For Law 14-177, see notes following § 19-1101.

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Subchapter I. General Provisions and Definitions.

§ 19-1301.01. Short title.

This chapter may be cited as the "Uniform Trust Code".

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — Law 15-104, the "Uniform Trust Act of 2003", was introduced in Council and assigned Bill No. 15-234, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on December 18, 2003, it was assigned Act No. 15-286 and transmitted to both Houses of Congress for its review. D.C. Law 15-104 became effective on March 10, 2004.

Editor's notes. — Uniform Law: This section is based upon § 101 of the Uniform Trust Code.

§ 19-1301.02. Scope.

This chapter applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 102 of the Uniform Trust Code.

§ 19-1301.03. Definitions.

For the purposes of this chapter, the term:

(1) "Action," with respect to an act of a trustee, includes a failure to act.

(2) "Beneficiary" means a person that:

(A) Has a present or future beneficial interest in a trust, vested or contingent; or

(B) In a capacity other than that of trustee, holds a power of appointment over trust property.

(3) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in section 19-1304.05(a).

(4) "Conservator" means a person appointed by the court to administer the estate of a minor or adult individual.

(5) "Distributee" means a beneficiary who is currently entitled to receive a distribution from a trust.

(6) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(7) "Guardian" means a person appointed by the court, a parent, or a spouse to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual. The term "guardian" does not include a guardian ad litem.

(8) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(9) "Jurisdiction," with respect to a geographic area, includes a State or country.

(10) "Permissible distributee" means a beneficiary who is currently eligible to receive a distribution from a trust.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(12) "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable only upon consent of the trustee or a person holding an adverse interest.

(13) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(14) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

(A) Is a distributee or permissible distributee of trust income or principal;

(B) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) of this paragraph terminated on that date; or

(C) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(15) "Revocable," as applied to a trust, means revocable by the settlor without the consent of a person holding an adverse interest.

(16) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

(17) "Settlor's successors in interest" means the residuary beneficiaries under the settlor's will, or if none, the settlor's heirs.

(18) "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest.

(19) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes an Indian tribe or band recognized by federal law or formally acknowledged by a State.

(20) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(21) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

(22) "Trustee" includes an original, additional, and successor trustee, and a cotrustee.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 103 of the Uniform Trust Code.

§ 19-1301.04. Knowledge.

(a) Subject to subsection (b) of this section, a person has knowledge of a fact if the person:

(1) Has actual knowledge of it;

(2) Has received a notice or notification of it; or

(3) From all the facts and circumstances known to the person at the time in question, has reason to know it.

(b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 104 of the Uniform Trust Code.

§ 19-1301.05. Default and mandatory rules.

(a) Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this chapter except:

(1) The requirements for creating a trust;

(2) The duty of a trustee to act in good faith and in accordance with the purposes of the trust;

(3) The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) The power of the court to modify or terminate a trust under sections 19-1304.10 through 19-1304.16;

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in subchapter V of this chapter;

(6) The power of the court under section 19-1307.02 to require, dispense with, or modify or terminate a bond;

(7) The power of the court under section 19-1307.08(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) Subject to subsection (c) of this section, the duty under section 19-1308.13(b)(2) and (3) to notify qualified beneficiaries of an irrevocable trust who have attained 25 years of age of the existence of the trust, the identity of the trustee, and their right to request the trustee's reports;

(9) Subject to subsection (c) of this section, the duty under section 19-1308.13(a) to respond to the request of a beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;

(10) The effect of an exculpatory term under section 19-1310.08;

(11) The rights under sections 19-1310.10 through 19-1310.13 of a person other than a trustee or beneficiary;

(12) Periods of limitation for commencing a judicial proceeding; and

(13) The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice.

(c) The settlor, in the trust instrument or in another writing delivered to the trustee, may waive or modify the duties of a trustee under section 19-1308.13 to give notice, information, and reports to beneficiaries by:

(1) Waiving or modifying such duties during the lifetime of the settlor or the lifetime of the settlor's surviving spouse;

(2) Specifying a different age at which a beneficiary or class of beneficiaries must be notified under section 19-1308.13(b)(2) and (3); or

(3) Designating a person or persons to act in good faith to protect the interests of beneficiaries, to receive any notice, information, or reports re-

quired under section 19-1308.13 in lieu of providing such notice, information, or reports to the beneficiaries.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 105 of the Uniform Trust Code.

§ 19-1301.06. Common law of trusts; principles of equity.

The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another statute of the District of Columbia.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 106 of the Uniform Trust Code.

§ 19-1301.07. Governing law.

The meaning and effect of the terms of a trust are determined by:

(1) The law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

(2) In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 107 of the Uniform Trust Code.

§ 19-1301.08. Principal place of administration.

(a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(2) All or part of the administration occurs in the designated jurisdiction.

(b) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(c) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (b) of this section, may transfer the trust's principal place of administration to another State or to a jurisdiction outside of the United States.

(d) The trustee shall notify the qualified beneficiaries of a proposed transfer

of a trust's principal place of administration not less than 60 days before initiating the transfer. The notice of proposed transfer must include:

(1) The name of the jurisdiction to which the principal place of administration is to be transferred;

(2) The address and telephone number at the new location at which the trustee can be contacted;

(3) An explanation of the reasons for the proposed transfer;

(4) The date on which the proposed transfer is anticipated to occur; and

(5) The date, not less than 60 days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(e) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(f) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 19-1307.04.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 108 of the Uniform Trust Code.

§ 19-1301.09. Methods and waiver of notice.

(a) Notice to a person under this chapter or the sending of a document to a person under this chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message.

(b) Notice otherwise required under this chapter or a document otherwise required to be sent under this chapter need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(c) Notice under this chapter or the sending of a document under this chapter may be waived by the person to be notified or sent the document.

(d) Notice of a judicial proceeding must be given as provided in the applicable rules of civil procedure.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 109 of the Uniform Trust Code.

§ 19-1301.10. Others treated as qualified beneficiaries.

(a) Whenever notice to qualified beneficiaries of a trust is required under this chapter, the trustee must also give notice to any other beneficiary who has sent the trustee a request for notice.

(b) A charitable organization expressly designated to receive distributions under the terms of a charitable trust or a person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 19-1304.08 or section 19-1304.09 has the rights of a qualified beneficiary under this chapter.

(c) The Corporation Counsel of the District of Columbia has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in the District of Columbia.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 110 of the Uniform Trust Code.

§ 19-1301.11. Nonjudicial settlement agreements.

(a) For the purposes of this section, the term "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

(b) Except as otherwise provided in subsection (c) of this section, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

(c) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter or other applicable law.

(d) Matters that may be resolved by a nonjudicial settlement agreement include:

(1) The interpretation or construction of the terms of the trust;

(2) The approval of a trustee's report or accounting;

(3) Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

(4) The resignation or appointment of a trustee and the determination of a trustee's compensation;

(5) Transfer of a trust's principal place of administration; and

(6) Liability of a trustee for an action relating to the trust.

(e) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in subchapter III of this chapter was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.
Editor's notes. — Uniform Law: This section is based upon § 111 of the Uniform Trust Code.

Subchapter II. Judicial Proceedings.

§ 19-1302.01. Role of court in administration of trust.

(a) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(b) A trust is not subject to continuing judicial supervision unless ordered by the court.

(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.
Editor's notes. — Uniform Law: This section is based upon § 201 of the Uniform Trust Code.

§ 19-1302.02. Jurisdiction over trustee and beneficiary.

(a) By accepting the trusteeship of a trust having its principal place of administration in the District of Columbia or by moving the principal place of administration to the District of Columbia, the trustee submits personally to the jurisdiction of the courts of the District of Columbia regarding any matter involving the trust.

(b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in the District of Columbia are subject to the jurisdiction of the courts of the District of Columbia regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of the District of Columbia regarding any matter involving the trust.

(c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.
Editor's notes. — Uniform Law: This section is based upon § 202 of the Uniform Trust Code.

Subchapter III. Representation.

§ 19-1303.01. Representation: basic effect.

(a) Notice to a person who may represent and bind another person under this subchapter has the same effect as if notice were given directly to the other person.

(b) The consent of a person who may represent and bind another person under this subchapter is binding on the person represented unless the person represented objects to the representation by notifying the trustee or the representative before the consent would otherwise have become effective.

(c) Except as otherwise provided in sections 19-1304.11 and 19-1306.02, a person who under this subchapter may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 301 of the Uniform Trust Code.

§ 19-1303.02. Representation by holder of general testamentary power of appointment.

The holder of a power of appointment may represent and bind persons whose interests as permissible appointees or takers in default are subject to the power. A qualified power of appointment is a power exercisable in favor of:

(1) The power holder, the power holder's estate, the power holder's creditors and the creditors of the power holder's estate; or

(2) All persons other than the power holder, the power holder's estate, the power holder's creditors, and the creditors of the power holder's estate.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 302 of the Uniform Trust Code.

§ 19-1303.03. Representation by fiduciaries and parents.

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) A conservator may represent and bind the estate that the conservator controls;

(2) A guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed;

(3) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(4) A trustee may represent and bind the beneficiaries of the trust;

(5) A personal representative of a decedent's estate may represent and bind persons interested in the estate;

(6) A parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed;

(7) An individual may represent a grandchild or a more remote descendent, whether born or unborn, whom a parent may not represent and bind under paragraph (6) of this subsection; and

(8) A qualified beneficiary may represent and bind any beneficiary who

may succeed to the qualified beneficiary's interest under the terms of the trust or pursuant to the exercise of a power of appointment.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.
Editor's notes. — Uniform Law: This section is based upon § 303 of the Uniform Trust Code.

§ 19-1303.04. Representation by person having substantially identical interest.

Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented with respect to the particular question or dispute.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.
Editor's notes. — Uniform Law: This section is based upon § 304 of the Uniform Trust Code.

§ 19-1303.05. Appointment of representative.

(a) If the court determines that an interest is not represented under this subchapter, or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

(b) A representative may act on behalf of the individual represented with respect to any matter arising under this chapter, whether or not a judicial proceeding concerning the trust is pending.

(c) In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.
Editor's notes. — Uniform Law: This section is based upon § 305 of the Uniform Trust Code.

Subchapter IV. Creation, Validity, Modification, and Termination of Trust.

§ 19-1304.01. Methods of creating trust.

A trust may be created by:

(1) Transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(2) Declaration by the owner of property that the owner holds identifiable property as trustee;

(3) Exercise of a power of appointment in favor of a trustee; or

(4) A court for the benefit of an individual in lieu of a transfer of property to a conservatorship or guardianship pursuant to Chapter 1 or subchapter VI of Chapter 20 of Title 21 of the District of Columbia Official Code.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 401 of the Uniform Trust Code.

§ 19-1304.02. Requirements for creation.

(a) A trust is created only if:

(1) The settlor has capacity to create a trust;

(2) The settlor indicates an intention to create the trust;

(3) The trust has a definite beneficiary or is:

(A) A charitable trust;

(B) A trust for the care of an animal, as provided in section 19-1304.08; or

(C) A trust for a noncharitable purpose, as provided in section 19-1304.09;

(4) The trustee has duties to perform; and

(5) The same person is not the sole trustee and sole beneficiary.

(b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 402 of the Uniform Trust Code.

CASE NOTES

ANALYSIS

Ambiguity.
Intent of settlor.

Ambiguity.

Extrinsic evidence admissible for purposes of determining settlor's intent, given ambiguity in trust instrument, may include, among other things, the relationship and financial positions of the parties, the motives or purpose for the trust agreement, and scrivener error, if any. In re Durosko Marital Trust, 862 A.2d 914, 2004 D.C. App. LEXIS 634 (2004).

Where there is ambiguity in the document itself, extrinsic evidence is admissible to determine the intent of the settlor of the trust or testator of a will. In re Durosko Marital Trust, 862 A.2d 914, 2004 D.C. App. LEXIS 634 (2004).

If there is no ambiguity in a trust instru-

ment, the settlor's intention must be determined from its four corners. In re Durosko Marital Trust, 862 A.2d 914, 2004 D.C. App. LEXIS 634 (2004).

Intent of settlor.

Intent and purpose of the settlor is the law of the trust. In re Durosko Marital Trust, 862 A.2d 914, 2004 D.C. App. LEXIS 634 (2004).

No matter how clearly a testator's wish to make a particular disposition may appear from sources outside the will, a court can not give it effect unless the words written into the will effect that disposition or are reasonably susceptible to the interpretation that they do. In re Durosko Marital Trust, 862 A.2d 914, 2004 D.C. App. LEXIS 634 (2004).

In construing a trust, the court will endeavor to determine and to effectuate the ideas and purposes of the settlor at the time the trust gift was established. In re Durosko Marital Trust, 862 A.2d 914, 2004 D.C. App. LEXIS 634 (2004).

In determining the settlor's intent, consideration must be given to the language of the trust instrument as a whole, rather than to isolated passages. In re Durosko Marital Trust, 862 A.2d 914, 2004 D.C. App. LEXIS 634 (2004).

Plaintiffs alleged sufficient facts to allow a reasonable inference that certain individual intended to create an oral charitable trust, as required for such trust to exist and permit a claim for breach of trust against directors of nonprofit corporation that had a bank account into which alleged trust funds were placed; according to plaintiffs' allegations, individual directed colleague to hold funds in the bank account in trust for the benefit of international church, individual and colleague had worked together for years and relocated to the United States to further their religious goals, colleague opened the bank account in international church's name and not in his name or individual's name, individual did not give the initial funds for deposit in the bank account for colleague's personal use, and those funds and all money deposited thereafter were used for the next decades exclusively to benefit international church. The Federation for World Peace and Unification International, et al. v. Moon, et al., 140 WLR 1605 (Super. Ct. 2012).

§ 19-1304.03. Trusts created in other jurisdictions.

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

(1) The settlor was domiciled, had a place of abode, or was a national;

(2) A trustee was domiciled or had a place of business; or

(3) Any trust property was located.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 403 of the Uniform Trust Code.

§ 19-1304.04. Trust purposes.

A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 404 of the Uniform Trust Code.

§ 19-1304.05. Charitable purposes; enforcement.

(a) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or

municipal purposes, or other purposes the achievement of which is beneficial to the community.

(b) If the terms of a charitable trust do not indicate or otherwise provide for the selection of a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

(c) The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 405 of the Uniform Trust Code.

§ 19-1304.06. Creation of trust induced by fraud, duress, or undue influence.

A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 406 of the Uniform Trust Code.

§ 19-1304.07. Evidence of oral trust.

Except as required by a statute other than this chapter, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 407 of the Uniform Trust Code.

§ 19-1304.08. Trust for care of animal.

(a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the

trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 408 of the Uniform Trust Code.

§ 19-1304.09. Noncharitable trust without ascertainable beneficiary.

Except as otherwise provided in section 19-1304.08 or by D.C. Official Code § 43-113, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 21 years.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 409 of the Uniform Trust Code.

§ 19-1304.10. Modification or termination of trust; proceedings for approval or disapproval.

(a) In addition to the methods of termination prescribed by section 19-1304.11 through section 19-1304.14, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under sections 19-1304.11 through 19-1304.16, or trust combination or division under section 19-1304.17, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under section 19-1304.11 may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under section 19-1304.13.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 410 of the Uniform Trust Code.

CASE NOTES

In general.

Even partial invalidity of a trust provision may not warrant termination of the trust, particularly where contingent interests are affected. In re Durosko Marital Trust, 862 A.2d 914, 2004 D.C. App. LEXIS 634 (2004).

§ 19-1304.11. Modification or termination of noncharitable irrevocable trust by consent.

(a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by:

(1) An agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust;

(2) The settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or

(3) The settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(c) A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.

(d) Upon termination of a trust under subsection (a) or (b) of this section, the trustee shall distribute the trust property as agreed by the beneficiaries:

(e) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b) of this section, the modification or termination may be approved by the court if the court is satisfied that:

(1) If all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) The interests of a beneficiary who does not consent will be adequately protected.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 411 of the Uniform Trust Code.

CASE NOTES

In general.

Beneficiaries had a contingent interest that gave them standing to challenge settlor's actions in revoking trust, as contrary to the trust instrument, where, if settlor had no power to revoke the trust subsequent to his wife's death, then the rest and remainder, after specified deductions, passed to the beneficiaries. In re Durosko Marital Trust, 862 A.2d 914, 2004 D.C. App. LEXIS 634 (2004).

§ 19-1304.12. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

(a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(b) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 412 of the Uniform Trust Code.

CASE NOTES

ANALYSIS

Compensation requests.
In general.

Compensation requests.

Trial court could amend special needs trust to require trustee to file detailed and specific compensation requests, based on finding that trustee wasted trust's assets by failing to provide sufficiently detailed compensation requests, even though court itself did not draft the trust but merely approved an already-drafted trust. In re D.M.B., 979 A.2d 15, 2009 D.C. App. LEXIS 357 (2009).

In general.

Terms of a trust are determined by the settlor's intention at the time of creation of the trust, and not by his subsequent intention. In re Durosko Marital Trust, 862 A.2d 914, 2004 D.C. App. LEXIS 634 (2004).

§ 19-1304.13. Cy pres.

Except as otherwise provided in the terms of the trust, if a particular charitable purpose is or becomes unlawful, impracticable, impossible to achieve, or wasteful:

(1) The trust does not fail, in whole or in part;

(2) The trust property does not revert to the settlor or the settlor's successors in interest; and

(3) The court may apply cy pres to modify or terminate the trust by

directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 413 of the Uniform Trust Code.

§ 19-1304.14. Termination of uneconomic trust.

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than $50,000 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(b) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(d) This section does not apply to an easement for conservation or preservation.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 414 of the Uniform Trust Code.

§ 19-1304.15. Reformation to correct mistakes.

The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 415 of the Uniform Trust Code.

CASE NOTES

In general.

Clear and convincing evidence supporting reformation of a trust may include the testimony of the attorney responsible for drafting the document. In re Durosko Marital Trust, 862 A.2d 914, 2004 D.C. App. LEXIS 634 (2004).

For purposes of trust reformation, clear and convincing evidence must support reformation. In re Durosko Marital Trust, 862 A.2d 914, 2004 D.C. App. LEXIS 634 (2004).

§ 19-1304.16. Modification to achieve settlor's tax objectives.

To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 416 of the Uniform Trust Code.

CASE NOTES

In general.

Based on limited record developed before summary judgment was granted, severability provision in trust could not be invoked to eliminate in their entirety, on the grounds of invalidity or unenforceability, provisions purporting to establish an irrevocable qualified terminable interest property trust, even though it appeared that settlor would not be eligible for the tax treatment accorded such trusts; tax reduction was not the only reason for which one might establish a private trust, and it could not be said that entire purpose of trust became impossible to perform. In re Durosko Marital Trust, 862 A.2d 914, 2004 D.C. App. LEXIS 634 (2004).

A mistake as to tax consequences may form the basis of a suit to reform a trust, or the interpretation of the trust in a manner that would qualify the taxpayer for certain tax treatment. In re Durosko Marital Trust, 862 A.2d 914, 2004 D.C. App. LEXIS 634 (2004).

§ 19-1304.17. Combination and division of trusts.

After notice to the qualified beneficiaries, a trustee may combine 2 or more trusts into a single trust or divide a trust into 2 or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 417 of the Uniform Trust Code.

§ 19-1304.18. Title of trust property.

Real or personal property that is transferred to a trust may be titled in the name of:

(1) The trust by reference to the instrument creating the trust;

(2) The current trustee as the trustee of such trust; or

(3) "The trustee" as the trustee of such trust.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Subchapter V. Creditor's Claims; Spendthrift and Discretionary Trusts.

§ 19-1305.01. Rights of beneficiary's creditor or assignee.

To the extent a beneficiary's interest is not protected by a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances. Whether or not a trust contains a spendthrift provision, the creditor of a beneficiary cannot exercise or compel the exercise of the beneficiary's right to commerce, approve, or disapprove a proposed trust termination or modification under sections 19-1304.11 through 19-1304.16, or trust combination or division under section 19-1304.17.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 501 of the Uniform Trust Code.

§ 19-1305.02. Spendthrift provision.

(a) A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest.

(b) A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary's interest.

(c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this subchapter, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 502 of the Uniform Trust Code.

§ 19-1305.03. Exceptions to spendthrift provision.

(a) For the purposes of this section, the term "child" includes any person for whom an order or judgment for child support has been entered in this or another State.

(b) Whether or not a trust contains a spendthrift provision, a beneficiary's child, who has a judgment or court order against the beneficiary for support or maintenance, may obtain from a court an order attaching present or future distributions when payable under the terms of the trust to or for the benefit of the beneficiary.

(c) A spendthrift provision is unenforceable against a claim of the District of

Columbia or the United States to the extent a statute of the District of Columbia or federal law so provides.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 503 of the Uniform Trust Code.

§ 19-1305.04. Discretionary trusts; effect of standard [Reserved].

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 504 of the Uniform Trust Code.

§ 19-1305.05. Creditor's claim against settlor.

(a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children under sections 19-101.02, 19-101.03, and 19-101.04, to the extent the settlor's residuary probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

(b) For the purposes of this section:

(1) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

(2) Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on the effective date of this chapter [March 10, 2004], or as later amended.

(c) If a proceeding other than a small estate proceeding is commenced in the District of Columbia to administer the estate of a deceased settlor as provided in Title 20, property of the trust of which the decedent was a settlor is not liable

for payment of claims against the settlor that were not properly presented in the estate proceeding.

(d) If a proceeding as described in subsection (c) of this section has not been commenced, the trustee of the trust of which the decedent was a settlor may publish a notice substantially similar to, and in the same manner as provided for the notice described in section 20-704, and thereby obtain for the trust the same protection from claims afforded to a decedent's estate under section 20-903. Claims against a deceased settlor are barred as against the trustees and the trust property unless presented to the trustee at the address provided in the notice within 6 months after the date of the first publication of the notice. Except to the extent inconsistent with this subsection, Chapter 9 of Title 20 applies to the trustee and trust created by a deceased settlor in the same manner as it applies to a personal representative and decedent's estate.

(e) If a notice under subsection (d) of this section is published and a proceeding to administer the settlor's estate is later commenced, claims against a deceased settlor are barred as against the trustee and trust property as of the date provided in subsection (d) of this section, and not the date provided in section 20-903.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

References in text. — Sections 2041(b)(2), 2514(e), and 2503(b) of the Internal Revenue Code of 1986, referred to in subsec. (b)(2), are classified to 26 U.S.C. § 2041(b)(2), 26 U.S.C. § 2514(e), and 26 U.S.C. § 2503(b).

Uniform Law: This section is based upon § 505 of the Uniform Trust Code.

§ 19-1305.06. Overdue distribution.

Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 506 of the Uniform Trust Code.

§ 19-1305.07. Personal obligations of trustee.

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 507 of the Uniform Trust Code.

Subchapter VI. Revocable Trusts.

§ 19-1306.01. Capacity of settlor of revocable trust.

The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 601 of the Uniform Trust Code.

§ 19-1306.02. Revocation or amendment of revocable trust.

(a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before the effective date of this chapter [March 10, 2004].

(b) If a revocable trust is created or funded by more than one settlor:

(1) To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

(2) To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and

(3) Upon the revocation or amendment of the trust by fewer than all of the settlers, the trustee shall promptly notify the other settlers of the revocation or amendment.

(c) The settlor may revoke or amend a revocable trust:

(1) By substantial compliance with a method provided in the terms of the trust; or

(2) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by.

(A) A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) Any other method manifesting clear and convincing evidence of the settlor's intent.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(e) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

(f) A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

(g) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 602 of the Uniform Trust Code.

CASE NOTES

ANALYSIS

Evidence.
Presumptions and burden of proof.

Evidence.

Extrinsic evidence, including testimony of scrivener, was admissible to resolve ambiguity as to whether settlor intended trust to become irrevocable upon the death of settlor's spouse, and thus contingent beneficiaries of trust were entitled to have court's ruling deferred on settlor's motion for summary judgment to permit them to complete discovery. In re Durosko Marital Trust, 862 A.2d 914, 2004 D.C. App. LEXIS 634 (2004).

Trust instrument was ambiguous as to whether or not it became irrevocable upon the death of settlor's spouse, even though settlor submitted affidavit in which he averred that he never intended trust to be irrevocable prior to his death, and thus extrinsic evidence, including testimony of scrivener, was admissible to ascertain the settlor's intent, where certain articles provided for the establishment of an irrevocable trust upon spouse's death, and another article reserved settlor's right, at all times prior to his death, to terminate the trust agreement or any trust established thereunder; affidavit was only settlor's after-the-fact assertion as to what he intended, and was not dispositive. In re Durosko Marital Trust, 862 A.2d 914, 2004 D.C. App. LEXIS 634 (2004).

Presumptions and burden of proof.

There is a legal presumption that a trust created under an instrument executed before the effective date of the Uniform Trust Code is irrevocable, unless there is express provision to the contrary. In re Durosko Marital Trust, 862 A.2d 914, 2004 D.C. App. LEXIS 634 (2004).

§ 19-1306.03. Settlor's powers; powers of withdrawal.

(a) While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(b) While a trust is not revocable, for so long as a person has a currently exercisable power of withdrawal over the entire principal of the trust, the duties of a trustee are owed exclusively to such person.

(c) While a trust is revocable and a settlor does not have the capacity to revoke the trust, a beneficiary shall have the right to enforce the settlor's intent to benefit the beneficiary during the settlor's incapacity.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 603 of the Uniform Trust Code.

§ 19-1306.04. Limitation on action contesting validity of revocable trust; distribution of trust property.

(a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earliest of:

(1) One year after the settlor's death;

(2) Ninety days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding; or

(3) Six months after the date of the first publication of notice of the trust's existence, the name and address of each trustee and of the settlor, and the time allowed for commencing a proceeding, in the same manner as required for publication of notice of appointment of a personal representative, if the trustee sends a copy of the text of such notice, not later than 15 days after the date of its first publication, to each qualified beneficiary of the trust, heir of the decedent, and other person who would be an interested person within the meaning of section 20-101(d) if the trust were a will and who would have been required to be sent notice of the appointment of a personal representative under section 20-704 if a personal representative had been appointed.

(b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

(1) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

(c) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 604 of the Uniform Trust Code.

Subchapter VII. Office of Trustee.

§ 19-1307.01. Accepting or declining trusteeship.

(a) Except as otherwise provided in subsection (c) of this section, a person designated as trustee accepts the trusteeship:

(1) By substantially complying with a method of acceptance provided in the terms of the trust; or

(2) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(c) A person designated as trustee, without accepting the trusteeship, may:

(1) Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to the designated cotrustee, or, if none, to the successor trustee, or, if none, to a distributee or permissible distributee; and

(2) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 701 of the Uniform Trust Code.

§ 19-1307.02. Trustee's bond.

(a) A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

(b) The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

(c) A regulated financial-service institution qualified to do trust business in the District of Columbia need not give bond, even if required by the terms of the trust.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 702 of the Uniform Trust Code.

§ 19-1307.03. Cotrustees.

(a) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may delegate to a cotrustee the performance of a function relating to management, investment, or trust administration, but may not

delegate a decision to make a distribution. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(f) Except as otherwise provided in subsection (g) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

(g) Each trustee shall exercise reasonable care to:

(1) Prevent a cotrustee from committing a serious breach of trust; and

(2) Compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 703 of the Uniform Trust Code.

§ 19-1307.04. Vacancy in trusteeship; appointment of successor.

(a) A vacancy in a trusteeship occurs if:

(1) A person designated as trustee rejects the trusteeship;

(2) A person designated as trustee cannot be identified or does not exist;

(3) A trustee resigns;

(4) A trustee is disqualified or removed;

(5) A trustee dies; or

(6) A guardian or conservator is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

(1) By a person designated pursuant to the terms of the trust to act as successor trustee;

(2) By a person appointed by unanimous agreement of the qualified beneficiaries; or

(3) By a person appointed by the court.

(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

(1) By a person designated pursuant to the terms of the trust to act as successor trustee;

(2) By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the Corporation Counsel of the District of Columbia concurs in the selection; or

(3) By a person appointed by the court.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary

whenever the court considers the appointment necessary for the administration of the trust.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 704 of the Uniform Trust Code.

§ 19-1307.05. Resignation of trustee.

(a) A trustee may resign:

(1) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees or, if there is no cotrustee, to the next designated successor trustee; or

(2) With the approval of the court.

(b) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 705 of the Uniform Trust Code.

§ 19-1307.06. Removal of trustee.

(a) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

(b) The court may remove a trustee if:

(1) The trustee has committed a serious breach of trust;

(2) Lack of cooperation among cotrustees substantially impairs the administration of the trust;

(3) Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

(4) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

(c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under section 19-1310.01(b) as may be necessary to protect the trust property or the interests of the beneficiaries.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 706 of the Uniform Trust Code.

§ 19-1307.07. Delivery of property by former trustee.

(a) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 707 of the Uniform Trust Code.

§ 19-1307.08. Compensation of trustee.

(a) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(b) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

(1) The duties of the trustee are substantially different from those contemplated when the trust was created; or

(2) The compensation specified by the terms of the trust would be unreasonably low or high.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 708 of the Uniform Trust Code.

CASE NOTES

ANALYSIS

Compensation of reasonable compensation.
Proof of reasonable compensation.

Compensation of reasonable compensation.

Trial court did not abuse its discretion, in calculating compensation for trustee of special needs trust, by awarding trustee an amount equal to 1% of trust assets, less amounts paid to outside investment consultant and certified public accountant, plus an addition $1000. In re D.M.B., 979 A.2d 15, 2009 D.C. App. LEXIS 357 (2009).

Proof of reasonable compensation.

Trial courts did not abuse their discretion in requiring trustee of special needs trusts to prove that the amount of his requested compensation, calculated as a percentage of trust assets, was reasonable before approving the compensation. In re D.M.B., 979 A.2d 15, 2009 D.C. App. LEXIS 357 (2009).

§ 19-1307.09. Reimbursement of expenses.

(a) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(1) Expenses that were properly incurred in the administration of the trust; and

(2) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(b) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 709 of the Uniform Trust Code.

Subchapter VIII. Duties and Powers of Trustee.

§ 19-1308.01. Duty to administer trust.

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 801 of the Uniform Trust Code.

§ 19-1308.02. Duty of loyalty.

(a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in section 19-1310.12, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(1) The transaction was authorized by the terms of the trust;

(2) The transaction was approved by the court;

(3) The beneficiary did not commence a judicial proceeding within the time allowed by section 19-1310.05;

(4) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 19-1310.9; or

(5) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(c) A sale, encumbrance, or other transaction involving the investment or

management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

(1) The trustee's spouse;

(2) The trustee's descendants, siblings, parents, or their spouses;

(3) An agent or attorney of the trustee; or

(4) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(d) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

(e) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(f) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of subchapter IX of this chapter. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee at least annually shall notify the persons entitled under section 19-1308.13 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

(g) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(h) This section does not preclude the following transactions, if fair to the beneficiaries:

(1) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(2) Payment of reasonable compensation to the trustee;

(3) A transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) A deposit of trust money in a regulated financial-service institution operated by the trustee; or

(5) An advance by the trustee of money for the protection of the trust.

(i) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 802 of the Uniform Trust Code.

CASE NOTES

In general.

Trustee of special needs trust for disabled minor was not entitled to fees for time spent litigating trustee compensation issues; not only did inclusion of request for such fees in petition violate court order, time spent was solely to benefit trustee, not trust beneficiary, and was not reasonable in relation to trust property or purpose of trust. In re De'Shawn Mello Brown, 135 WLR 301 (Super. Ct. 2007).

§ 19-1308.03. Impartiality.

If a trust has 2 or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 803 of the Uniform Trust Code.

§ 19-1308.04. Prudent administration.

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 804 of the Uniform Trust Code.

§ 19-1308.05. Costs of administration.

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 805 of the Uniform Trust Code.

CASE NOTES

In general.

Trustee of special needs trust for disabled minor was not entitled to fees for time spent litigating trustee compensation issues; not only did inclusion of request for such fees in petition violate court order, time spent was solely to benefit trustee, not trust beneficiary, and was not reasonable in relation to trust property or purpose of trust. In re De'Shawn Mello Brown, 135 WLR 301 (Super. Ct. 2007).

§ 19-1308.06. Trustee's skills.

A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 806 of the Uniform Trust Code.

§ 19-1308.07. Delegation by trustee.

(a) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with subsection (a) of this section is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

(d) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of the District of Columbia, an agent submits to the jurisdiction of the courts of the District of Columbia.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 807 of the Uniform Trust Code.

§ 19-1308.08. Powers to direct.

(a) While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

(b) If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the

attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from breach of a fiduciary duty.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 808 of the Uniform Trust Code.

§ 19-1308.09. Control and protection of trust property.

A trustee shall take reasonable steps to take control of and protect the trust property.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 809 of the Uniform Trust Code.

§ 19-1308.10. Recordkeeping and identification of trust property.

(a) A trustee shall keep adequate records of the administration of the trust.

(b) A trustee shall keep trust property separate from the trustee's own property.

(c) Except as otherwise provided in subsection (d) of this section, a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of 2 or more separate trusts.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 810 of the Uniform Trust Code.

§ 19-1308.11. Enforcement and defense of claims.

A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.
Editor's notes. — Uniform Law: This section is based upon § 811 of the Uniform Trust Code.

§ 19-1308.12. Collecting trust property.

A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.
Editor's notes. — Uniform Law: This section is based upon § 812 of the Uniform Trust Code.

§ 19-1308.13. Duty to inform and report.

(a) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

(b) Subject to subsection (e) of this section, a trustee:

(1) Upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;

(2) Within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

(3) Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection (c) of this section; and

(4) Shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

(c)(1) A trustee shall, annually and at the termination of the trust, send a report to the distributees and permissible distributees.

(2) A trustee shall, at the termination of the trust, send a report to other qualified beneficiaries who request it.

(3) Upon a vacancy in a trusteeship, unless a cotrustee remains in office, the former trustee shall send a report to the qualified beneficiaries.

(4) Upon a vacancy in a trusteeship or upon termination of the trust, the trustee shall send a report to a nonqualified beneficiary who requests it unless the preparation of the report was waived by the qualified beneficiaries.

(5) A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

(6) For the purposes of this subsection, the term "report" means a report of the trust property, liabilities, receipts, disbursement, and distributions,

including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market value.

(d) A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

(e) Subsections (a), (b), and (c) of this section do not apply to a trust created under an instrument executed before the effective date of this chapter [March 10, 2004].

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 813 of the Uniform Trust Code.

§ 19-1308.14. Discretionary powers; tax savings.

(a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute", "sole", or "uncontrolled", the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) Section 21-1722 applies to a trust governed by this chapter.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 814 of the Uniform Trust Code.

§ 19-1308.15. General powers of trustee.

(a) A trustee, without authorization by the court, may exercise:

(1) Powers conferred by the terms of the trust; and

(2) Except as limited by the terms of the trust:

(A) All powers over the trust property which an unmarried competent owner has over individually owned property;

(B) Any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

(C) Any other powers conferred by this chapter.

(b) The exercise of a power is subject to the fiduciary duties prescribed by this subchapter.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 815 of the Uniform Trust Code.

§ 19-1308.16. Specific powers of trustee.

Without limiting the authority conferred by section 19-1308.15, a trustee may:

(1) Collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) Acquire or sell property, for cash or on credit, at public or private sale;

(3) Exchange, partition, or otherwise change the character of trust property;

(4) Deposit trust money in an account in a regulated financial-service institution;

(5) Borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(7) With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(A) Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(B) Hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(C) Pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights;

(D) Exercise stock options and other rights; and

(E) Deposit the securities with a depositary or other regulated financial-service institution;

(8) With respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or Vacate plats and adjust boundaries;

(9) Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) Grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) Insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) Abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) With respect to possible liability for violation of environmental law.

(A) Inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(B) Take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(C) Decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(D) Compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(E) Pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(16) Exercise elections with respect to federal, state, and local taxes;

(17) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(19) Pledge trust property to guarantee loans made by others to the beneficiary;

(20) Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) Paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, to an agent of the beneficiary authorized to receive payment, or if there is no such agent, to the beneficiary's guardian;

(B) Paying it to the beneficiary's custodian under Chapter 3 of Title 21 or under the uniform gifts to minors act or uniform transfers to minors act of another state or custodial trustee under Chapter 13 of Title 19, or under the uniform custodial trusts act of another state;

(C) If the trustee does not know of a conservator, agent authorized to receive payment, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(D) Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(23) Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers;

(26) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it; and

(27) Purchase and pay premiums on life insurance on the life of any beneficiary.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 816 of the Uniform Trust Code.

§ 19-1308.17. Distribution upon termination.

(a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(b) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes, and to secure a right of reimbursement if the reserve is inadequate.

(c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(1) It was induced by improper conduct of the trustee; or

(2) The beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 817 of the Uniform Trust Code.

Subchapter IX. Uniform Prudent Investor Act.

§ 19-1309.01. Prudent investor rule.

(a) Except as provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule as set forth in sections 19-1309.02 through 19-1309.09.

(b) The prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by provisions of the trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on provisions of the trust.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Prior Codifications. — 2001 Ed., § 28-4701.

1981 Ed., § 28-4701.

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 1 of the Uniform Prudent Investor Act.

CASE NOTES

In general.

Personal representative of unsupervised estate did not violate the prudent person rule by failing to purchase six-month United States Treasury bills with excess funds, given relatively short period of time within which personal representative reasonably could anticipate funding trust, need to allow for emergence of unknown heirs or creditors within that time, and time needed to decide on a proper vehicle for investing funds. In re De'Shawn Mello Brown, 135 WLR 301 (Super. Ct. 2007).

Personal representative of unsupervised estate was not required to invest estate funds within one month of his appointment in a more productive vehicle of investment to satisfy the prudent person rule. In re De'Shawn Mello Brown, 135 WLR 301 (Super. Ct. 2007).

Prudent person rule, rather than prudent investor rule, applied to decisions of personal representative of an unsupervised estate. In re De'Shawn Mello Brown, 135 WLR 301 (Super. Ct. 2007).

§ 19-1309.02. Standard of care; portfolio strategy; risk and return objectives.

(a) A trustee shall invest and manage trust assets as a prudent investor would by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among the circumstances relevant to the trust or its beneficiaries that a trustee shall consider in investing and managing the trust assets are the following:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(5) The expected total return from income and the appreciation of capital;

(6) Other resources of the beneficiaries;

(7) Needs for liquidity, for regularity of income, and for preservation or appreciation of capital; and

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall take reasonable steps to verify facts relevant to the investment and management of trust assets.

(e) Subject to the standards of this subchapter, a trustee may invest in any kind of property or type of investment.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Prior Codifications. — 2001 Ed., § 28-4702.
1981 Ed., § 28-4702.

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 2 of the Uniform Prudent Investor Act.

§ 19-1309.03. Diversification.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Prior Codifications. — 2001 Ed., § 28-4703.
1981 Ed., § 28-4703.

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 3 of the Uniform Prudent Investor Act.

§ 19-1309.04. Duties at inception of trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this subchapter.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Prior Codifications. — 2001 Ed., § 28-4704.
1981 Ed., § 28-4704.

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 4 of the Uniform Prudent Investor Act.

§ 19-1309.05. Reviewing compliance.

The prudent investor rule expresses a standard of conduct, not a particular outcome. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

§ 19-1309.06. Language invoking standard of subchapter.

The following terms or comparable language in a trust instrument, unless otherwise limited or modified by the instrument, authorizes any investment or strategy permitted under this subchapter: "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule".

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Subchapter X. Liability of Trustees and Rights of Persons Dealing with Trustee.

§ 19-1310.01. Remedies for breach of trust.

(a) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.

(b) To remedy a breach of trust that has occurred or may occur, the court may:

(1) Compel the trustee to perform the trustee's duties;

(2) Enjoin the trustee from committing a breach of trust;

(3) Compel the trustee to redress a breach of trust by paying money, restoring property, or other means;

(4) Order a trustee to account;

(5) Appoint a special fiduciary to take possession of the trust property and administer the trust;

(6) Suspend the trustee;

(7) Remove the trustee as provided in section 19-1307.06;

(8) Reduce or deny compensation to the trustee;

(9) Subject to section 19-1310.12, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds, or

(10) Order any other appropriate relief.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 1001 of the Uniform Trust Code.

CASE NOTES

Reduction of compensation of trustee.

Trustee of special needs trust breached his duty to trust by charging to trust fees for litigation of issues related to trustee's compensation, warranting, as sanction, that trustee pay 15% of the difference between the amount trustee requested and amount allowed; trustee charged for litigation that would benefit only trustee, and violated prior order not to charge trust for time spent addressing compensation. In re D.M.B., 979 A.2d 15, 2009 D.C. App. LEXIS 357 (2009).

§ 19-1310.02. Damages for breach of trust.

(a) A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

(1) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

(2) The profit the trustee made by reason of the breach.

(b) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 1002 of the Uniform Trust Code.

§ 19-1310.03. Damages in absence of breach.

(a) A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

(b) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.
Editor's notes. — Uniform Law: This section is based upon § 1003 of the Uniform Trust Code.

§ 19-1310.04. Attorney's fees and costs.

In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.
Editor's notes. — Uniform Law: This section is based upon § 1004 of the Uniform Trust Code.

§ 19-1310.05. Limitation of action against trustee.

(a) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

(c) If subsection (a) of this section does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within 3 years after the first to occur of:

(1) The removal, resignation, or death of the trustee;

(2) The termination of the beneficiary's interest in the trust; or

(3) The termination of the trust.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.
Editor's notes. — Uniform Law: This section is based upon § 1005 of the Uniform Trust Code.

§ 19-1310.06. Reliance on trust instrument.

A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.
Editor's notes. — Uniform Law: This section is based upon § 1006 of the Uniform Trust Code.

§ 19-1310.07. Event affecting administration or distribution.

If the happening of an event, including marriage, divorce, performance of educational requirements, the attainment of a specified age, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee's lack of knowledge.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 1007 of the Uniform Trust Code.

§ 19-1310.08. Exculpation of trustee.

(a) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

(1) Relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

(2) Was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

(b) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 1008 of the Uniform Trust Code.

§ 19-1310.09. Beneficiary's consent, release, or ratification.

A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.
Editor's notes. — Uniform Law: This section is based upon § 1009 of the Uniform Trust Code.

§ 19-1310.10. Limitation on personal liability of trustee.

(a) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

(b) A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

(c) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.
Editor's notes. — Uniform Law: This section is based upon § 1010 of the Uniform Trust Code.

§ 19-1310.11. Interest as general partner.

(a) Unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to D.C. Official Code §§ 33-101.01 through 33-112.04 (Uniform Partnership Act of 1996), or D.C. Official Code §§ 33-201.01 through 33-211.07 (Uniform Limited Partnership Act of 1987).

(b) Except as otherwise provided in subsection (c) of this section, a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(c) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.
Editor's notes. — Uniform Law: This section is based upon § 1011 of the Uniform Trust Code.

§ 19-1310.12. Protection of person dealing with trustee.

(a) A person other than a beneficiary who in good faith assists a trustee, or

who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(b) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(c) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(d) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 1012 of the Uniform Trust Code.

§ 19-1310.13. Certification of trust.

(a) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

(1) That the trust exists and the date the trust instrument was executed;

(2) The identity of the settlor;

(3) The identity and address of the currently acting trustee;

(4) The powers of the trustee;

(5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(6) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee;

(7) The trust's taxpayer identification number; and

(8) The manner of taking title to trust property.

(b) A certification of trust may be signed or otherwise authenticated by any trustee.

(c) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(d) A certification of trust need not contain the dispositive terms of a trust.

(e) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.

(f) A person who acts in reliance upon a certification of trust without

knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

(g) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(h) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

(i) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 1013 of the Uniform Trust Code.

Subchapter XI. Miscellaneous Provisions.

§ 19-1311.01. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 1101 of the Uniform Trust Code.

§ 19-1311.02. Electronic records and signatures.

The provisions of this chapter governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 467; 15 U.S.C. § 7002), and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 1102 of the Uniform Trust Code.

§ 19-1311.03. Application to existing relationships.

(a) Except as otherwise provided in this chapter, on the effective date of this chapter [March 10, 2004]:

(1) This chapter applies to all trusts created before, on, or after its effective date [March 10, 2004];

(2) This chapter applies to all judicial proceedings concerning trusts commenced on or after its effective date [March 10, 2004];

(3) This chapter applies to judicial proceedings concerning trusts commenced before its effective date [March 10, 2004] unless the court finds that application of a particular provision of this chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this chapter does not apply and the superseded law applies;

(4) Any rule of construction or presumption provided in this chapter applies to trust instruments executed before the effective date of the chapter [March 10, 2004] unless there is a clear indication of a contrary intent in the terms of the trust; and

(5) An act done before the effective date of the chapter [March 10, 2004] is not affected by this chapter.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of the chapter [March 10, 2004], that statute continues to apply to the right even if it has been repealed or superseded.

(Mar. 10, 2004, D.C. Law 15-104, § 2(b), 51 DCR 208.)

Legislative history of Law 15-104. — For Law 15-104, see notes following § 19-1301.01.

Editor's notes. — Uniform Law: This section is based upon § 1106 of the Uniform Trust Code.

CHAPTER 15. UNIFORM DISCLAIMER OF PROPERTY INTERESTS.

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§ 19-1501. Short title.

This chapter may be cited as the "Uniform Disclaimer of Property Interests Act".

(Mar. 2, 2007, D.C. Law 16-205, § 2(b), 53 DCR 9063.)

Legislative history of Law 16-205. — Law 16-205, the "Uniform Disclaimers of Property Interests Revision Act of 2006", was introduced in Council and assigned Bill No. 16-707, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on July 11, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 25, 2006, it was assigned Act No. 16-505 and transmitted to both Houses of Congress for its review. D.C. Law 16-205 became effective on March 2, 2007.

Editor's notes. — For prior codification of Uniform Disclaimer of Property Interests: See § 21-2091 et seq.

Uniform Law: This section is based upon § 1 of the Uniform Disclaimer of Property Interests Act (1999).

§ 19-1502. Definitions.

For the purposes of this chapter, the term:

(1) "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

(2) "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made.

(3) "Disclaimer" means the refusal to accept an interest in or power over property.

(4) "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney, or other person authorized to act as a fiduciary with respect to the property of another person.

(5) "Jointly held property" means property held in the name of 2 or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged by a state.

(8) "Trust" means:

(A) An express trust, charitable or noncharitable, with additions thereto, whenever and however created; or

(B) A trust created pursuant to a statute, judgment, or decree which requires the trust to be administered in the manner of an express trust.

(Mar. 2, 2007, D.C. Law 16-205, § 2(b), 53 DCR 9063.)

Legislative history of Law 16-205. — For Law 16-205, see notes following § 19-1501.

Editor's notes. — Uniform Law: This section is based upon § 2 of the Uniform Disclaimer of Property Interests Act (1999).

§ 19-1503. Scope.

This chapter applies to disclaimers of any interest in or power over property, whenever created.

(Mar. 2, 2007, D.C. Law 16-205, § 2(b), 53 DCR 9063.)

Legislative history of Law 16-205. — For Law 16-205, see notes following § 19-1501.

Editor's notes. — Uniform Law: This section is based upon § 3 of the Uniform Disclaimer of Property Interests Act (1999).

§ 19-1504. Chapter supplemented by other law.

(a) Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter.

(b) This chapter does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than this chapter.

(Mar. 2, 2007, D.C. Law 16-205, § 2(b), 53 DCR 9063.)

Legislative history of Law 16-205. — For Law 16-205, see notes following § 19-1501.

Editor's notes. — Uniform Law: This section is based upon § 4 of the Uniform Disclaimer of Property Interests Act (1999).

§ 19-1505. Power to disclaim; general requirements; when irrevocable.

(a) A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

(b) Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of the District of Columbia or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part,

any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(c)(1) To be effective, a disclaimer must:

(A) Be in a writing or other record;

(B) Declare the disclaimer;

(C) Describe the interest or power disclaimed;

(D) Be signed by the person making the disclaimer; and

(E) Be delivered or filed in the manner provided in § 19-1512.

(2) For the purposes of this subsection, the term:

(A) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(B) "Signed" means, with present intent to authenticate or adopt a record, to:

(i) Execute or adopt a tangible symbol; or

(ii) Attach to or logically associate with the record an electronic sound, symbol, or process.

(d) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(e) A disclaimer becomes irrevocable when it is delivered or filed pursuant to § 19-1512 or when it becomes effective as provided in §§ 19-1506 through 19-1511, whichever occurs later.

(f) A disclaimer made under this chapter is not a transfer, assignment, or release.

(Mar. 2, 2007, D.C. Law 16-205, § 2(b), 53 DCR 9063.)

Legislative history of Law 16-205. — For Law 16-205, see notes following § 19-1501.

Editor's notes. — Uniform Law: This section is based upon § 5 of the Uniform Disclaimer of Property Interests Act (1999).

§ 19-1506. Disclaimer of interest in property.

(a) For the purposes of this section, the term:

(1) "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

(2) "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

(b) Except for a disclaimer governed by § 19-1507 or 19-1508, the following rules apply to a disclaimer of an interest in property:

(1) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

(2) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

(3) If the instrument does not contain a provision described in paragraph (2) of this subsection, the following rules apply:

(A) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(B) If the disclaimant is an individual, except as otherwise provided in subparagraphs (C) and (D) of this paragraph, the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(C) If by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(D) If the disclaimed interest would pass to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest instead passes by representation to the descendants of the disclaimant who survive the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died at the time of distribution. However, if the transferor's surviving spouse is living but is remarried at the time of distribution, the transferor is deemed to have died unmarried at the time of distribution.

(4) Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

(Mar. 2, 2007, D.C. Law 16-205, § 2(b), 53 DCR 9063.)

Legislative history of Law 16-205. — For Law 16-205, see notes following § 19-1501.

Editor's notes. — Uniform Law: This section is based upon § 6 of the Uniform Disclaimer of Property Interests Act (1999).

§ 19-1507. Disclaimer of rights of survivorship in jointly held property.

(a) Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of:

(1) A fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; or

(2) All of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

(b) A disclaimer under subsection (a) of this section takes effect as of the

death of the holder of jointly held property to whose death the disclaimer relates.

(c) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

(Mar. 2, 2007, D.C. Law 16-205, § 2(b), 53 DCR 9063.)

Legislative history of Law 16-205. — For Law 16-205, see notes following § 19-1501.

Editor's notes. — Uniform Law: This section is based upon § 7 of the Uniform Disclaimer of Property Interests Act (1999).

§ 19-1508. Disclaimer of interest by trustee.

If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

(Mar. 2, 2007, D.C. Law 16-205, § 2(b), 53 DCR 9063.)

Legislative history of Law 16-205. — For Law 16-205, see notes following § 19-1501.

Editor's notes. — Uniform Law: This section is based upon § 8 of the Uniform Disclaimer of Property Interests Act (1999).

§ 19-1509. Disclaimer of power of appointment or other power not held in fiduciary capacity.

If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

(1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(3) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

(Mar. 2, 2007, D.C. Law 16-205, § 2(b), 53 DCR 9063.)

Legislative history of Law 16-205. — For Law 16-205, see notes following § 19-1501.

Editor's notes. — Uniform Law: This section is based upon § 9 of the Uniform Disclaimer of Property Interests Act (1999).

§ 19-1510. Disclaimer by appointee, object, or taker in default of exercise of power of appointment.

(a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(b) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

(Mar. 2, 2007, D.C. Law 16-205, § 2(b), 53 DCR 9063.)

Legislative history of Law 16-205. — For Law 16-205, see notes following § 19-1501.

Editor's notes. — Uniform Law: This section is based upon § 10 of the Uniform Disclaimer of Property Interests Act (1999).

§ 19-1511. Disclaimer of power held in fiduciary capacity.

(a) If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(b) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(c) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

(Mar. 2, 2007, D.C. Law 16-205, § 2(b), 53 DCR 9063.)

Legislative history of Law 16-205. — For Law 16-205, see notes following § 19-1501.

Editor's notes. — Uniform Law: This section is based upon § 11 of the Uniform Disclaimer of Property Interests Act (1999).

§ 19-1512. Delivery or filing.

(a) For the purposes of this section, the term "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(1) An annuity or insurance policy;

(2) An account with a designation for payment on death;

(3) A security registered in beneficiary form;

(4) A pension, profit-sharing, retirement, or other employment-related benefit plan; or

(5) Any other nonprobate transfer at death.

(b) Subject to subsections (c) through (l) of this section, delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.

(c) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) A disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) If no personal representative is then serving, it must be filed with a court having jurisdiction to appoint the personal representative.

(d) In the case of an interest in a testamentary trust:

(1) A disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate; or

(2) If no personal representative is then serving, it must be filed with a court having jurisdiction to enforce the trust.

(e) In the case of an interest in an inter vivos trust:

(1) A disclaimer must be delivered to the trustee then serving;

(2) If no trustee is then serving, it must be filed with a court having jurisdiction to enforce the trust; or

(3) If the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

(f) In the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a disclaimer must be delivered to the person making the beneficiary designation.

(g) In the case of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a disclaimer must be delivered to the person obligated to distribute the interest.

(h) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

(i) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

(1) The disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) If no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(j) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(1) The disclaimer must be delivered to the holder, the personal representative of the holder's estate, or to the fiduciary under the instrument that created the power, or

(2) If no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(k) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (c), (d), or (e) of this section, as if the power disclaimed were an interest in property.

(l) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

(Mar. 2, 2007, D.C. Law 16-205, § 2(b), 53 DCR 9063.)

Legislative history of Law 16-205. — For Law 16-205, see notes following § 19-1501.

Editor's notes. — Uniform Law: This section is based upon § 12 of the Uniform Disclaimer of Property Interests Act (1999).

§ 19-1513. When disclaimer barred or limited.

(a) A disclaimer is barred by a written waiver of the right to disclaim.

(b) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(1) The disclaimant accepts the interest sought to be disclaimed;

(2) The disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or

(3) A judicial sale of the interest sought to be disclaimed occurs.

(c) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(d) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(e) A disclaimer is barred or limited if so provided by law other than this chapter.

(f) A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this chapter had the disclaimer not been barred.

(Mar. 2, 2007, D.C. Law 16-205, § 2(b), 53 DCR 9063.)

Legislative history of Law 16-205. — For Law 16-205, see notes following § 19-1501.

Editor's notes. — Uniform Law: This section is based upon § 13 of the Uniform Disclaimer of Property Interests Act (1999).

§ 19-1514. Tax qualified disclaimer.

Notwithstanding any other provision of this chapter, if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this chapter.

(Mar. 2, 2007, D.C. Law 16-205, § 2(b), 53 DCR 9063.)

Legislative history of Law 16-205. — For Law 16-205, see notes following § 19-1501.

Editor's notes. — Uniform Law: This section is based upon § 14 of the Uniform Disclaimer of Property Interests Act (1999).

§ 19-1515. Recording of disclaimer.

If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. Failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

(Mar. 2, 2007, D.C. Law 16-205, § 2(b), 53 DCR 9063.)

Legislative history of Law 16-205. — For Law 16-205, see notes following § 19-1501.

Editor's notes. — Uniform Law: This section is based upon § 15 of the Uniform Disclaimer of Property Interests Act (1999).

§ 19-1516. Application to existing relationships.

Except as otherwise provided in § 19-1513, an interest in or power over

property existing on the effective date of this chapter as to which the time for delivering or filing a disclaimer under law superseded by this chapter has not expired may be disclaimed after the effective date of this chapter.

(Mar. 2, 2007, D.C. Law 16-205, § 2(b), 53 DCR 9063.)

Legislative history of Law 16-205. — For Law 16-205, see notes following § 19-1501.

Editor's notes. — Uniform Law: This section is based upon § 16 of the Uniform Disclaimer of Property Interests Act (1999).

§ 19-1517. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supercedes the federal Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001), but does not modify, limit, or supercede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).

(Mar. 2, 2007, D.C. Law 16-205, § 2(b), 53 DCR 9063.)

Legislative history of Law 16-205. — For Law 16-205, see notes following § 19-1501.

Editor's notes. — Uniform Law: This section is based upon § 17 of the Uniform Disclaimer of Property Interests Act (1999).

§ 19-1518. Uniformity of application and construction.

In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(Mar. 2, 2007, D.C. Law 16-205, § 2(b), 53 DCR 9063.)

Legislative history of Law 16-205. — For Law 16-205, see notes following § 19-1501.

Editor's notes. — Uniform Law: This section is based upon § 18 of the Uniform Disclaimer of Property Interests Act (1999).

TITLE 20. PROBATE AND ADMINISTRATION OF DECEDENTS' ESTATES.

Chapter
1. General Provisions.
3. Opening the Estate.
4. Supervised and Unsupervised Administration.
5. The Personal Representative and Special Administrator; Appointment, Control and Termination of Authority.
7. Administration of the Estate.
9. Claims.
11. Special Provisions Relating to Distribution.
13. Closing the Estate.

Chapter 1. General Provisions.

Sec.
20-101. Definitions.
20-102. Verification.
20-103. Notice.
20-104. Presumption.
20-105. Devolution of property at death.
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20-107. Right to seek Court resolution.
20-108. Appointment of guardian ad litem.
20-108.01. Effect of fraud and evasion.
20-109. Effective date.

§ 20-101. Definitions.

When used in this title, unless otherwise apparent from the context the term:

(a) "Abbreviated probate proceeding" means the type of proceeding defined in section 20-311.

(b) "Court" means the Probate Division of the Superior Court of the District of Columbia.

(c) "Heir" means a person entitled to property of an intestate decedent pursuant to Chapter 3 of Title 19.

(d)(1) "Interested person" means (A) any person named in the will to serve as personal representative, until the appointment of a personal representative; (B) a personal representative; (C) any legatee in being, whether such legatee's interest is vested or contingent, until the legacy is paid in full; (D) an heir, except that an heir ceases to be an interested person once a will has been admitted to probate; provided, that, an heir is an interested person for the purpose of any proceeding to contest the validity of the will and following any determination that the decedent died intestate as to some or all of the estate; and (E) Any creditor of the decedent, including those persons whose rights accrue at the time of death, who has timely presented a claim in excess of $500 that has not been barred or discharged.

(2)(A) If an interested person, as described in paragraph (1) of this subsection, is legally disabled, the following persons shall also be interested persons unless the Court has appointed a guardian ad litem:

(i) the judicially appointed guardian, committee or conservator for such person, if any; or

(ii) if there is no judicially appointed guardian, committee or conservator, then the parent or other person having assumed responsibility for such person, or an attorney-in-fact for such person (subject to the terms of the power of attorney), or any other person with legal authority to act for such person.

(B) If the Court has appointed a guardian ad litem under section 20-108, the guardian ad litem shall be an interested person.

(C) Any guardian, guardian ad litem, committee, conservator, parent, attorney-in-fact, or other legal representative of an interested person who is under any legal disability may act on behalf of such interested person in all matters under this title without the need for any specific authorization from any court, except to the extent otherwise prohibited by a court or by the instrument granting and defining the scope of such representative's powers.

(3) An heir or legatee whose interest is contingent solely on whether some other heir or legatee survives the decedent or survives by a stated period shall not be an interested person unless and until the other heir or legatee dies within such period.

(e) "Intestate decedent" means a person who dies without leaving a valid will.

(f) "Legacy" means a disposition of property made in a will.

(g) "Legatee" means the surviving spouse of the decedent or a person who, under the terms of a will, would receive a legacy. Legatee includes a trustee of a trust created under or referred to in the decedent's will but not a beneficiary of the trust unless each trustee is also a petitioning party or acting personal representative.

(h) "Letters" means the official instrument by which a personal representative is appointed by the Court to administer the estate of a decedent.

(i) "Metropolitan area" means Prince Georges County, and Montgomery County, Maryland; Arlington County, Fairfax County, the City of Fairfax, the City of Falls Church, and the City of Alexandria, Virginia.

(j) "Personal representative" means a person, other than a special administrator, who has been appointed by the Court to administer the estate of a decedent.

(k) "Probate" means the admission to record of a decedent's will or the determination of a decedent's intestacy.

(l) "Property" means both real and personal property and any interest in such property that is owned by the decedent and that does not pass at the time of the decedent's death to another person by the terms of the instrument under which it is held, or by operation of law.

(m) "Register" means the Register of Wills.

(n) "Residuary legatee" means the person to whom a testate decedent bequeaths the surplus of such decedent's estate, subject to all debts and other legacies specifically mentioned in the will.

(o) "Rules" means the rules promulgated by the Superior Court of the District of Columbia applicable to the Probate Division of that Court.

(p) "Special administrator" means an administrator appointed as provided in section 20-531.

(q) "Special appraiser" means an appraiser who is not an employee of the Office of the Register.

(r) "Standard probate proceeding" means the type of proceeding defined in section 20-321.

(s) "Standing appraiser" means an appraiser who is an employee of the Office of the Register.

(t) "Testate decedent" means a person who dies leaving a valid will.

(u) "Supervised administration" or "supervised personal representative" means that the administration and the representative have been ordered to be supervised in accordance with this title.

(v) "Unsupervised personal representative" means a personal representative who is not subject to continued court supervision pursuant to this title.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(a)-(d), 42 DCR 63; Apr. 18, 1996, D.C. Law 11-110, § 25(a), 43 DCR 530; Apr. 9, 1997, D.C. Law 11-255, § 19(a), 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 20-101.

Legislative history of Law 3-72. — Law 3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-241. — Law 10-241, the "Probate Reform Act of 1994," was introduced in Council and assigned Bill No. 10-649, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-386 and transmitted to both Houses of Congress for its review. D.C. Law 10-241 became effective on March 21, 1995.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-108.01.

Uniform Disclaimer of Property Interests: See § 19-1501 et seq.

Section 32(a) of D.C. Law 15-354 provided that Title 20 is designated Title 20 of the District of Columbia Official Code.

CASE NOTES

Analysis

In general.
Interested person.
—In general.
—Legatee in being, interested person.
Personal representative.

In general.

The District of Columbia probate system is largely derived from Maryland, and, ordinarily, courts of the District follow Maryland decisions. D.C. Code 1951, § 20-101 et seq. Randall v. Bockhorst, 232 F.2d 334, 1956 U.S. App. LEXIS 3026 (C.A.D.C. 1956).

Statutory framework of statutes dealing with administration of estates has dual purpose of giving executor notice of a claim against estate and thus protecting him from committing error of disbursing the assets of estate without first resolving validity of all claims and satisfying the debts and of protection of the creditors of the estate. D.C. Code § 20-301 et seq. American

Sec. & Trust Co. v. Bindeman, 303 A.2d 188, 1973 D.C. App. LEXIS 261 (1973).

Interested person.

— In general.

Decedent's alleged common law wife, after forfeiting her bequest by bringing an unsuccessful will contest, was no longer an interested party under the probate code with standing to appeal, as of right, post-forfeiture decisions of the probate court which did not concern her directly. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

An heir hunter corporation, as an assignee of heirs, was an "interested person," could participate in the probate proceedings in place of the assignors, and, therefore, had standing to sue the estate in place of the heirs. Brandenburger & Davis, Inc. v. Estate of Lewis, 771 A.2d 984, 2001 D.C. App. LEXIS 85 (2001).

A potential heir was a putative "interested person" to the extent necessary to establish an entitlement to estate proceeds. Brandenburger & Davis, Inc. v. Estate of Lewis, 771 A.2d 984, 2001 D.C. App. LEXIS 85 (2001).

An heir hunter corporation, as an assignee of a potential heir, had standing to present proof of the heirship; the assignee stood in the assignor's shoes for the purpose of establishing its own rights and interests in a portion of the assignor's entitlement to an interest in an estate. Brandenburger & Davis, Inc. v. Estate of Lewis, 771 A.2d 984, 2001 D.C. App. LEXIS 85 (2001).

Suspended attorney's alleged status as intended personal representative of estate did not make him an "interested person" with statutory standing to bring complaint alleging decedent's will was lost or destroyed. D.C. Code 1981, §§ 20-101(d)(1), 20-302(b). In re Estate of Barfield, 736 A.2d 991, 1999 D.C. App. LEXIS 191 (1999).

Suspended attorney's alleged status as creditor of estate, because of his ownership of typewriter that was in possession of estate, did not make him an "interested person" with standing to bring complaint alleging decedent's will was lost or destroyed, absent any showing that value of typewriter exceeded $500 statutory threshold for standing. D.C. Code 1981, § 20-101(d)(1)(E). In re Estate of Barfield, 736 A.2d 991, 1999 D.C. App. LEXIS 191 (1999).

Testator's niece had standing as an "interested person" to challenge personal representative's actions as breach of fiduciary, as niece was a legatee with a vested interest in her specific bequest and a contingent interest in income from principal that passed to trust. In re Estate of Clarence Pechacek, 135 WLR 177 (Super. Ct. 2006).

Niece of decedent's husband was not an "interested party," with regard to intestate decedent's estate; niece was not a collateral relation and she did not claim to be an heir. In re Hattie Dean Lucas, 133 WLR 663 (Super. Ct. 2005).

Intestate decedent's first cousin and cousin's daughters were "heirs" and therefore "interested parties" with regard to decedent's estate. In re Hattie Dean Lucas, 133 WLR 663 (Super. Ct. 2005).

— Legatee in being, interested person.

Smithsonian Institution, named as a will beneficiary, was a "legatee in being" with standing to contest the probate of a prior will. D.C. Code 1981, § 20-101(d)(1). In re Estate of Burleson, 738 A.2d 1199, 1999 D.C. App. LEXIS 207 (1999).

A person named as a beneficiary in a will is a "legatee in being" and has standing to contest the probate of another will until it is finally determined that the will under which the beneficiary would have an interest in the estate will not be admitted to probate. D.C. Code 1981, § 20-101(d)(1). In re Estate of Burleson, 738 A.2d 1199, 1999 D.C. App. LEXIS 207 (1999).

Residual legatees under will, whose potential property interests in inter vivos trust flowed from trust's pour-over provision directing the payment of assets to personal representatives of settlor's estate upon settlor's death to be distributed under will, could not proceed directly against trustees for alleged misconduct, as if beneficiary of trust; rather, legatees were required to first seek relief against personal representatives of estate, with whom they had fiduciary relationship, in probate court, for failing to pursue claims of trustee misconduct. D.C. Code 1981, §§ 20-101(d)(1)(C), 20-743. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Personal representative.

Second successor personal representative of decedent's estate had standing to object to the side agreement on fees that first successor personal representative entered into with some of the heirs of decedent's estate, though the heirs that entered into the side agreement did not object or complain, as second successor personal representative only learned about the side agreement when he discovered a substantial discrepancy between the amount of assets shown in probate division's account and the assets that first successor personal representative turned over to him, missing assets and the side agreement with some of the heirs were plainly matters that related to the administration of the estate, and second successor personal representative had a duty to take control

of decedent's estate and maintain any action necessary to recover possession of estate property. Estate of Green v. Loewinger, 912 A.2d 1198, 2006 D.C. App. LEXIS 647 (2006).

An important aspect of a personal representative's fiduciary duty is that he must place the best interests of the estate's heirs ahead of his own interests. Estate of Green v. Loewinger, 912 A.2d 1198, 2006 D.C. App. LEXIS 647 (2006).

A personal representative owes a fiduciary duty to the estate and its beneficiaries. Estate of Green v. Loewinger, 912 A.2d 1198, 2006 D.C. App. LEXIS 647 (2006).

First successor personal representative of decedent's estate breached his fiduciary duty to act in the best interest of estate's heirs by seeking additional fees from heirs after probate court had reduced his requested fees as a sanction for his overbilling and lack of documentation, and thus side agreement regarding his fees that personal representative entered into with some of estate's heirs was invalid, where personal representative asked for a stay of distributions from the court in order to appeal reduction of his requested fees, wrote letter to heirs without the court's knowledge telling them if they did not pay his additional fees he would not be able to make a distribution until case was decided on appeal, violated stay for those heirs who agreed to pay an additional fee, and did not make a distribution to those heirs who did not agree to pay the additional fee even after his appeal was dismissed. Estate of Green v. Loewinger, 912 A.2d 1198, 2006 D.C. App. LEXIS 647 (2006).

In absence of personal representative or other party claiming status of legal representative, insured's widow was his "legal representative" within meaning of policy insuring insured and his legal representatives against direct loss by fire. D.C. Code 1981, § 20-101(j). Young v. Firemen's Ins. Co., 463 A.2d 675, 1983 D.C. App. LEXIS 414 (1983).

§ 20-102. Verification.

(a) When a writing is required by this title to be verified, verification shall be sufficient if the writing is signed by the person required to make the verification and contains the following representation:

"I do solemnly declare and affirm under penalty of law that the contents of the foregoing document are true and correct to the best of my knowledge, information, and belief."

(b) Any person who in making a verification under this section willfully and contrary to the verification states any material matter that such person does not believe to be true shall be guilty of an offense. Any person convicted of this offense shall be punished by imprisonment for not less than 2 or more than 10 years.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Cross references. — Presentation of claims, see § 20-905.

Prior Codifications. — 1981 Ed., § 20-102.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-101.

CASE NOTES

Analysis

Attorney fees.
In general.

Attorney fees.

Trial court had discretion to allow attorney's claim for legal fees from estate for services performed for a decedent prior to death, which was filed within six-month limitations period, even though claim did not conform to all formal statutory requirements; claim had not been verified or sent to register of wills or to each personal representative. D.C. Code 1981, §§ 20-102, 20-903(a), (a)(1), 20-905, 20-905(a-c). In re Estate of Phillips, 532 A.2d 654, 1987 D.C. App. LEXIS 472 (1987).

In general.

Verifications in probate documents must be signed by responsible personal representative or guardian. In re Uchendu, 812 A.2d 933, 2002 D.C. App. LEXIS 745 (2002).

Litigating attorney representing corporate

party may properly verify complaint. D.C. Code 1981, § 20-102(a). Easter Seal Soc'y for Disabled Children v. Berry, 627 A.2d 482, 1993 D.C. App. LEXIS 144 (1993).

§ 20-103. Notice.

(a) *First notice.* — Unless personal service or notice by publication is expressly required by this title or by the Rules, the first notice required or permitted to be given to any person under this title shall be sufficient if deposited as registered or certified mail, postage prepaid, return receipt requested, addressed to the addressee at the address last known to the sender, with delivery restricted to the addressee.

(b) *Subsequent notice.* — Any subsequent notice to such person in accordance with this title shall be sufficient if deposited as ordinary mail, postage prepaid, addressed either to the same address at which the first notice was received, as evidence by return receipt from the post office or, if the sender has received written notice from the addressee of a change of address, to the new address.

(c) *Failure of notice.* — If no return receipt is received apparently signed by the addressee, and there is no proof of actual notice, no action taken in any proceeding under this title shall prejudice the rights of the person entitled to notice unless the sender verifies, to the satisfaction of the Court, that reasonable efforts to locate and warn the addressee of the pendency of the action have been made.

(d) *Notice to personal representative.* — A personal representative or special administrator is not required to give self notice.

(e) *Notice for contingent interests.* — If the interest of an heir or legatee is solely contingent on whether some other heir or legatee survives the decedent or some other event or period, any notice given before the contingent interest vests shall conclusively be deemed to have been given to the heir or legatee whose interest has been contingent.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(e), 42 DCR 63.)

Cross references. — Notice of appointment of personal representative, see § 20-704.

Prior Codifications. — 1981 Ed., § 20-103.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-101.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-108.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-108.01.

§ 20-104. Presumption.

Unless otherwise expressly provided, whenever this title states that a fact shall be presumed, the presumption is rebuttable.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-104.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-101.

§ 20-105. Devolution of property at death.

Except as provided in section 20-357, all property of a decedent shall be subject to this title and, upon the decedent's death, shall pass directly to the personal representative, who shall hold the legal title for administration and distribution of the estate.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-105.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-101.

CASE NOTES

Analysis

Clouds on title.
Collection and management of estate property.
Exoneration doctrine.
In general.
Jurisdiction.
Necessity of administration.
Pour-over trust property.

Clouds on title.

When title to property has vested by operation of law, as in the case of land descending by intestacy, even a mere oral assertion of rights to inheritance may constitute a cloud and give rise to an action to quiet title. In re Tyree, 493 A.2d 314, 1985 D.C. App. LEXIS 393 (1985).

Wife, four children and grandchild of man who died intestate, who brought action in adverse possession alleging they were fee simple owners of townhouse owned by decedent at time of his death, that they were currently maintaining it as rental property, but that land records did not adequately reflect their ownership, stated a claim in an action to quiet title, since until land records were amended to reflect that plaintiffs were true owners of townhouse, their right to enjoyment of the property was in danger by possibility that others in the future might claim to be unknown heirs of the decedent. In re Tyree, 493 A.2d 314, 1985 D.C. App. LEXIS 393 (1985).

Collection and management of estate property.

Trust had right to specific performance against settlor's personal representative to require him to convey property to trust under the terms of the will, subject to any outstanding creditor claims and expenses of administration. Ackerman v. Abbott, 978 A.2d 1250, 2009 D.C. App. LEXIS 382 (2009).

Evidence was sufficient to establish that personal representative of decedent's estate did not fail to discharge her duties effectively, which would have otherwise required her removal, by failing to account for the value of and appraise property that was once owned by decedent's father; decedent's father had also died, title to the property had vested in the personal representative of decedent's father's estate and did not pass directly to his heirs, and personal representative of decedent's estate testified that she did not include property in her filings because decedent's father's estate had not completed probate and it was unclear how much of an interest in the property decedent's estate would be entitled to. Karim v. Gurley (In re Estate of Bates), 948 A.2d 518, 2008 D.C. App. LEXIS 245 (2008).

Probate Division of Superior Court has power to appoint personal representative whose duty it is to take possession and control of decedent's estate and to maintain any action reasonably necessary to recover possession of estate property. Dennis v. Edwards, 831 A.2d 1006, 2003 D.C. App. LEXIS 557 (2003).

Where testator specifically bequeathed life income interest in marina to his widow, title to life interest in marina did not vest immediately in widow upon testator's death, but rather passed directly to personal representative, and thus widow was not entitled to preferential distribution of marina income when other specific bequests were abated to satisfy administrative costs and debts of estate. D.C. Code 1981, § 20-105. Dickson v. Mintz, 634 A.2d 1243, 1993 D.C. App. LEXIS 314 (1993).

Exoneration doctrine.

Exoneration rule, charging liens and expenses for specifically devised real property to residuary estate, rather than to specific legatees, applies in all cases absent contrary intent by testator, applies during entire period before distribution of estate assets rather than merely as of testator's death, and applies to encumbrances as well as expenses needed to preserve and maintain property before final distribution. Lemp v. Keto, 678 A.2d 1010, 1996 D.C. App. LEXIS 118 (1996).

Testator's intent and the personal representative's control of property are critical facts when determining whether exoneration rule

applies to encumbrances and holding expenses of specifically devised real property. Lemp v. Keto, 678 A.2d 1010, 1996 D.C. App. LEXIS 118 (1996).

Fact that real property subject to specific devise is encumbered by mortgage increases likelihood that testator intended exoneration, as well as payment of preservation and maintenance expenses from residuary estate, absent clear expression of testator's intent to the contrary. Lemp v. Keto, 678 A.2d 1010, 1996 D.C. App. LEXIS 118 (1996).

Exoneration, under which residuary estate is charged with removing liens and paying expenses of preserving and maintaining nonincome producing specifically devised property pending final distribution, is the rule absent contrary expression by the testator. Lemp v. Keto, 678 A.2d 1010, 1996 D.C. App. LEXIS 118 (1996).

Probate Reform Act provisions generally abolishing distinction between real and personal property for payment of debts and establishing procedures to be followed by secured creditor in obtaining payment on debt from estate did not fairly express intent to abolish common-law doctrine of exoneration which provides direction as to whether liens on real property which is subject to specific devise, for which testator was personally obligated, are to pass with property or be discharged at expense of residuary legatee or distributee of personal estate. D.C. Code 1981, §§ 1-101 et seq., 20-105, 20-106, 20-903(a). Martin v. Johnson, 512 A.2d 1017, 1986 D.C. App. LEXIS 381 (1986).

Probate Reform Act did not explicitly repeal common-law doctrine of exoneration. D.C. Code 1981, §§ 20-105, 20-106, 20-903, 20-903(a). Martin v. Johnson, 512 A.2d 1017, 1986 D.C. App. LEXIS 381 (1986).

In general.

Deeds of trust executed by two mortgagors after death of decedent, who had owned the property with the mortgagors as tenants in common, were not void, though upon decedent's death decedent's interest in the mortgaged property by statute vested in the personal representative of decedent's estate, as the two mortgagors were free as cotenants to encumber their interests in the property, and mortgagees, under the doctrine of after-acquired title, could acquire an interest in the entire property when decedent's wife, who was one of the mortgagors, inherited decedent's interest in the property. OneWest Bank, FSB v. Marshall, 18 A.3d 715, 2011 D.C. App. LEXIS 149 (2011).

Personal representative of decedent is vested with legal title to all property, both real and personal, owned by decedent at time of her death. Dennis v. Edwards, 831 A.2d 1006, 2003 D.C. App. LEXIS 557 (2003).

Upon death of testator, all property, whether real or personal, passes directly to personal representative, who holds legal title throughout period of administration and distribution of estate, rather than named devisee. D.C. Code 1981, § 20-105. Dickson v. Mintz, 634 A.2d 1243, 1993 D.C. App. LEXIS 314 (1993).

Jurisdiction.

Probate Division of Superior Court has subject matter jurisdiction over estate of any decedent who was domiciled in District of Columbia at time of death. Dennis v. Edwards, 831 A.2d 1006, 2003 D.C. App. LEXIS 557 (2003).

Probate Division has no jurisdiction over real property which descends by operation of law under the intestate succession statutes unless the property must be sold in order to pay the estate's debts. D.C. Code 1981, §§ 18-607, 18-609. In re Tyree, 493 A.2d 314, 1985 D.C. App. LEXIS 393 (1985).

Necessity of administration.

Since statute vests legal title to a decedent's property in the personal representative, appointment of a personal representative is a prerequisite to probate and distribution and precludes the possibility of non-judicial distribution. Douglas v. Lyles, 841 A.2d 1, 2004 D.C. App. LEXIS 6 (2004).

Provisions of Probate Reform Act require appointment of personal representative to dispose of decedent's property and abolish common-law doctrine allowing nonjudicial disposition of decedent's estate. D.C. Code 1981, §§ 19-301, 20-101 et seq., 20-105, 20-109, 20-357. Richardson v. Green, 528 A.2d 429, 1987 D.C. App. LEXIS 384 (1987).

Contract by which attorney was employed to facilitate disposition of estate was null and void, as its purpose was to nonjudicially dispose of decedent's estate, which was not legally possible under provisions of Probate Reform Act, and thus trustee was under no duty to pay legal service fees. D.C. Code 1981, §§ 19-301, 20-101 et seq., 20-105, 20-109, 20-357. Richardson v. Green, 528 A.2d 429, 1987 D.C. App. LEXIS 384 (1987).

The only exception to the requirement of the appointment of a personal representative in this section is § 20-357, which provides that if the property of the decedent is not more than 2 cars, the mayor may transfer title to same and administration of the estate may be dispensed with. Richardson v. Green, 113 WLR 1973 (Super. Ct. 1985).

Pour-over trust property.

Residual legatees under will, whose potential property interests in inter vivos trust flowed from trust's pour-over provision directing the payment of assets to personal representatives of settlor's estate upon settlor's death to be distributed under will, could not proceed di-

rectly against trustees for alleged misconduct, as if beneficiary of trust; rather, legatees were required to first seek relief against personal representatives of estate, with whom they had fiduciary relationship, in probate court, for failing to pursue claims of trustee misconduct. D.C. Code 1981, §§ 20-101(d)(1)(C), 20-743. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Under normal circumstances personal representatives, not legatees, would assert interests of estate against pour-over trustees. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Legatees under will had standing to raise objections to, and seek redress for, actions or inactions by personal representatives, as to inter vivos pour-over trust, that diminished size of property interests passing to legatees through probate estate. D.C. Code 1981, § 20-743. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Pour-over trust provision terminating inter vivos trust upon settlor's death and paying assets over to personal representatives of settlor's estate to be distributed in accordance with settlor's will established new fiduciary relationship between personal representatives and legatees under will, independent of relationship between trust and settlor's personal representatives. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Personal representative that takes property from pour-over trust, pursuant to trust document that provides for final accounting to personal representative, occupies position analogous to successor trustee, and is obligated to pursue any claim for breach of trust committed by predecessor of which it has knowledge, on behalf of probate estate. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

§ 20-106. Preference.

Except as provided in sections 20-343 and 20-703, there shall be no preference or priority between real and personal property.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(f), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-106.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-101.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-108.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-108.01.

CASE NOTES

Analysis

In general.
Legacies or devises subject to abatement.

In general.

Probate Reform Act did not explicitly repeal common-law doctrine of exoneration. D.C. Code 1981, §§ 20-105, 20-106, 20-903, 20-903(a). Martin v. Johnson, 512 A.2d 1017, 1986 D.C. App. LEXIS 381 (1986).

Probate Reform Act provisions generally abolishing distinction between real and personal property for payment of debts and establishing procedures to be followed by secured creditor in obtaining payment on debt from estate did not fairly express intent to abolish common-law doctrine of exoneration which provides direction as to whether liens on real property which is subject to specific devise, for which testator was personally obligated, are to pass with property or be discharged at expense of residuary legatee or distributee of personal estate. D.C. Code 1981, §§ 1-101 et seq., 20-105, 20-106, 20-903(a). Martin v. Johnson, 512 A.2d 1017, 1986 D.C. App. LEXIS 381 (1986).

Legacies or devises subject to abatement.

Legacies in same class abate proportionally, absent proof that decedent intended to give preference to one bequest. D.C. Code 1981, § 20-106. Dickson v. Mintz, 634 A.2d 1243, 1993 D.C. App. LEXIS 314 (1993).

Testator's widow failed to carry her burden of establishing that testator intended specific bequest of marina to have priority over any other bequest in will, where she presented no evidence but instead relied exclusively on will and probate record, and thus all specific legacies in will, including marina and specific bequest to widow of life income interest in marina, would be abated proportionally to satisfy administrative costs and debts of estate. D.C. Code 1981,

§ 20-106. Dickson v. Mintz, 634 A.2d 1243, 1993 D.C. App. LEXIS 314 (1993).

When subject matter of specific legacy abates, all interests with respect to that bequest abate as well. D.C. Code 1981, § 20-106. Dickson v. Mintz, 634 A.2d 1243, 1993 D.C. App. LEXIS 314 (1993).

§ 20-107. Right to seek Court resolution.

(a) An interested person, the beneficiary of a trust, or the Register may, at any time, petition the Court for an order, following notice to interested persons and with or without a hearing, to resolve a question or controversy arising in the course of a supervised or unsupervised administration of a decedent's estate.

(b) Any interested person in an unsupervised administration, any unpaid creditor of either the decedent or the estate whose claim is not barred, and the personal representative, may request Court action or assistance in connection with any specific issue related to the administration of the estate. Upon receiving such request, if the Court determines a hearing is necessary, the Court shall notify the personal representative and set a hearing on the matter (unless waived by all interested persons); the personal representative shall certify to the Court that the personal representative has given notice of the hearing to the interested persons, by certified mail or personal delivery at least 10 days prior to the hearing.

(c) Any request filed by an interested person, including any pleading described in this title as a petition, need not be in any particular format. It will be sufficient for the purpose intended as long as it is in writing and specifically identifies the particular issue or concern which the interested person wishes the Court to review or resolve.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(g), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-107.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-101.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-108.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-108.01.

CASE NOTES

ANALYSIS

Assignee of heir.
Motion for reconsideration.
Standing.
Trusts.

Assignee of heir.

An heir hunter corporation, as an assignee of a potential heir, had standing to present proof of the heirship; the assignee stood in the assignor's shoes for the purpose of establishing its own rights and interests in a portion of the assignor's entitlement to an interest in an estate. Brandenburger & Davis, Inc. v. Estate of Lewis, 771 A.2d 984, 2001 D.C. App. LEXIS 85 (2001).

An heir hunter corporation that was an interested person as an assignee of heirs had a right to seek court resolution in the underlying probate proceeding. Brandenburger & Davis, Inc. v. Estate of Lewis, 771 A.2d 984, 2001 D.C. App. LEXIS 85 (2001).

Motion for reconsideration.

Petition filed by son of intestate decedent, seeking to rescind his assignment of his property rights in decedent's estate and to remove the assignee as personal representative of the estate, was not a motion for reconsideration of

the assignment, as would be subject to 30-day time limit, i.e., motion would have to be filed within 30 days after hearing on assignee's petition for probate, and instead was a petition to resolve a question or controversy arising in the course of administration of the estate, which petition could be filed at any time; at hearing on assignee's petition for probate, the focus was on son's age and competency rather than on the validity of the assignment, and no ruling was entered regarding the validity of the assignment, and thus, on son's petition, there was no ruling to be reconsidered, regarding validity of assignment. In re Estate of McKenney, 953 A.2d 336, 2008 D.C. App. LEXIS 330 (2008).

Standing.

Second successor personal representative of decedent's estate had standing to object to the side agreement on fees that first successor personal representative entered into with some of the heirs of decedent's estate, though the heirs that entered into the side agreement did not object or complain, as second successor personal representative only learned about the side agreement when he discovered a substantial discrepancy between the amount of assets shown in probate division's account and the assets that first successor personal representative turned over to him, missing assets and the side agreement with some of the heirs were plainly matters that related to the administration of the estate, and second successor personal representative had a duty to take control of decedent's estate and maintain any action necessary to recover possession of estate property. Estate of Green v. Loewinger, 912 A.2d 1198, 2006 D.C. App. LEXIS 647 (2006).

Trusts.

Trust beneficiary generally cannot bring action directly against third-party wrongdoer for alleged harm to trust unless beneficiary is in possession of subject matter of trust; rather, his relief is action in equity against trustee to compel trustee to proceed against third party, although for purposes of judicial economy third party may also be joined as defendant in beneficiary's action. Restatement (Second) of Trusts § 281. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Legatees under will had standing to raise objections to, and seek redress for, actions or inactions by personal representatives, as to inter vivos pour-over trust, that diminished size of property interests passing to legatees through probate estate. D.C. Code 1981, § 20-743. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Under normal circumstances personal representatives, not legatees, would assert interests of estate against pour-over trustees. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

§ 20-108. Appointment of guardian ad litem.

If it appears to the Court that there is an apparent conflict between an interested person under a legal disability and a person described in section 20-101(d)(2)(A), the Court may, in its discretion, appoint a guardian ad litem for the person with a legal disability.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Apr. 24, 2007, D.C. Law 16-305, § 34(a), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 20-108.

Effect of amendments. — D.C. Law 16-305 substituted "person with a legal disability" for "legally disabled person".

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-101.

Legislative history of Law 16-305. — Law 16-305, the "People First Respectful Language Modernization Act of 2006", was introduced in Council and assigned Bill No. 16-664, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 17, 2006, it was assigned Act No. 16-437 and transmitted to both Houses of Congress for its review. D.C. Law 16-305 became effective on April 24, 2007.

CASE NOTES

In general.

Guardian ad litem was not required to be appointed at time of probate of testator's will to represent testator's grandchildren, since grandchildren were not within class of testator's heirs at law and would not be entitled to or interested in testator's estate in case will had not been executed. D.C. Code 1961, §§ 19-301, 19-303. In re Estate of James, 221 F. Supp. 456, 1963 U.S. Dist. LEXIS 9773 (D.D.C1963).

§ 20-108.01. Effect of fraud and evasion.

(a) Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this title or if fraud is used to avoid or circumvent the provisions or purposes of this title, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not. Any proceeding must be commenced within 2 years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than 5 years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during lifetime that may affect the succession to the decedent's estate.

(b) Notwithstanding the remedy provided in subsection (a) of this section, nothing in this title shall be construed to validate any document with respect to which there was any misrepresentation, fraudulent act, or illegal provision in connection with its execution.

(c) In addition to the remedy provided in subsection (a) of this section, any person convicted of a fraudulent act in connection with the collection, administration, distribution, or closing of an estate under this title and who thereby obtains property of another or causes another to lose property, shall be subject to the penalties set forth in section 122 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; § 22-3222).

(Mar. 21, 1995, D.C. Law 10-241, § 3(i), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-108.1.

Emergency legislation. — For temporary amendment of § 4 of D.C. Law 10-241, see § 2 of the Probate Reform Act of 1994 Emergency Amendment Act of 1995 (D.C. Act 11-79, June 28, 1995, 42 DCR 3452).

Legislative history of Law 10-241. — Law 10-241, the "Probate Reform Act of 1994," was introduced in Council and assigned Bill No. 10-649, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-386 and transmitted to both Houses of Congress for its review. D.C. Law 10-241 became effective on March 21, 1995.

Editor's notes. — Application of Law 10-241: Section 4 of D.C. Law 10-241, as amended by § 2 of D.C. Law 11-54, provided that the act shall be applicable to estates of decedents who died on or after July 1, 1995.

Section 32(b) of D.C. Law 15-354 provided that the section designation of § 20-108.1 of the District of Columbia Official Code is redesignated as § 20-108.01.

CASE NOTES

In general.

"Intrinsic fraud" regarding a will generally means fraud which arises within the court proceeding and which concerns an issue that speaks directly to a determination on the merits. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

"Extrinsic fraud" regarding a will usually refers to the manner in which a judgment is obtained and concerns matters not directly in issue. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

The discovery rule can be used to bring a late will contest, beyond the time limitations in the will contest statute, based on a claim of intrinsic fraud. Valentine v. Elliott (In re Estate of

Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Decedent's alleged common law wife was put on inquiry notice of alleged fraud regarding decedent's will, so that under the discovery rule the limitations period for her will contest began to run, when the alleged wife received notice of the will, where alleged wife, upon receiving such notice, had immediate suspicions regarding the will's authenticity because decedent, on the date of the will, had been unable to write, and she felt that he "would never have said [what was said in the will] about me." Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

§ 20-109. Effective date.

This title shall apply only to an estate of a decedent who died on or after January 1, 1981. Title 20 of the D.C. Official Code enacted by virtue of An Act To enact Part III of the District of Columbia Code, entitled "Decedents' Estates and Fiduciary Relations", codifying the general and permanent laws relating to decedents' estates and fiduciary relations in the District of Columbia, approved September 14, 1965 (79 Stat. 703), and An Act To amend chapter 19 of title 20 of the District of Columbia Code to provide for distribution of a minor's share in a decedent's personal estate where the share does not exceed the value of $1,000, approved August 11, 1971 (85 Stat. 307), shall apply to an estate of a decedent who died before January 1, 1981.

(June 24, 1980, D.C. Law 3-72, § 402, 27 DCR 2155; Aug. 2, 1983, D.C. Law 5-24, § 3, 30 DCR 3341.)

Prior Codifications. — 1981 Ed., § 20-109.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-101.

Legislative history of Law 5-24. — Law 5-24, the "Technical and Clarifying Amendments Act of 1983," was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

References in text. — "Chapter 19 of title 20", referred to in this section, did not exist in the 1981 Edition at the time of the recodification into the 2001 Edition.

CHAPTER 3. OPENING THE ESTATE.

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Subchapter I. General Provisions.

§ 20-301. Scope.

This chapter applies to the opening of an estate which begins with the filing of a petition for probate by an interested person as provided in section 20-304 and results in the probate of a will or the determination of a decedent's intestacy and the appointment of a personal representative. Probate may occur either:

(a) As an abbreviated probate proceeding as provided in subchapter II of this chapter;

(b) As a standard probate proceeding as provided in subchapter III of this chapter;

(c) As a small estates proceeding as provided in subchapter VI of this chapter.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-301.

Legislative history of Law 3-72. — Law 3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

CASE NOTES

Estate taxes.

Where husband's estate did not have enough assets to pay bequests to children and grandchildren, and wife executrix made voluntary

promise to pay such bequests, such promise being rooted in moral, but not money's worth, consideration, and where such promise to make gift became enforceable under local law only because it was cast in form of "special" bond undertaken to pay bequests, amounts paid from wife's estate after her death to satisfy husband's bequests, were not deductible, for estate tax purposes, as "claims against" wife's estate. 26 U.S.C. (I.R.C.1954) §§ 2053, 2053(a)(3), 2053(c)(1)(A), 2053(a)(2,3), (c)(1)(A); D.C. Code §§ 20-301 to 20-304, 20-306, 28-2501. Young v. United States, 559 F.2d 695, 1977 U.S. App. LEXIS 10083 (C.A.D.C. 1977).

§ 20-302. Necessity for probate.

(a) A will is ineffective to transfer property or to nominate a personal representative unless it is admitted to probate or recorded as provided in section 20-341 (b).

(b) Except for foreign personal representatives, no person shall exercise the powers or assume the duties of a personal representative unless he has been appointed by the Court.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-302.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.

CASE NOTES

ANALYSIS

Ancillary appointment.
Common law.
Contracts in violation of section.
Purposes of probate.

Ancillary appointment.

The statutory requirement that when any will shall have been authenticated and admitted to probate letters testamentary thereon shall be issued to the executor named therein, if he is legally competent and will accept the trust, does not apply to ancillary letters. D.C. Code 1930, §§ 20-301, 20-505. Purcell v. Cramton, 143 F.2d 22, 1944 U.S. App. LEXIS 2996 (1944).

Where testatrix, who was domiciled in Michigan and whose estate and beneficiaries were largely in Michigan but who had intangible property in District of Columbia, named resident of District of Columbia as sole executor, but Michigan court appointed Michigan resident as administrator with will annexed, because Michigan law forbids appointment of a nonresident executor, it was within discretion of District of Columbia court to appoint the Michigan executor as ancillary administrator. D.C. Code 1940, §§ 20-301, 20-505. Purcell v. Cramton, 143 F.2d 22, 1944 U.S. App. LEXIS 2996 (1944).

Common law.

Provisions of Probate Reform Act require appointment of personal representative to dispose of decedent's property and abolish common-law doctrine allowing nonjudicial disposition of decedent's estate. D.C. Code 1981, §§ 19-301, 20-101 et seq., 20-105, 20-109, 20-357. Richardson v. Green, 528 A.2d 429, 1987 D.C. App. LEXIS 384 (1987).

Contracts in violation of section.

Contract by which attorney was employed to facilitate disposition of estate was null and void, as its purpose was to nonjudicially dispose of decedent's estate, which was not legally possible under provisions of Probate Reform Act, and thus trustee was under no duty to pay legal service fees. D.C. Code 1981, §§ 19-301, 20-101 et seq., 20-105, 20-109, 20-357. Richardson v. Green, 528 A.2d 429, 1987 D.C. App. LEXIS 384 (1987).

Purposes of probate.

Probate of will is essential to enable will to be evidence of title to property disposed of by will. D.C. Code 1940, § 19-313. Norris v. Harrison, 198 F.2d 953, 1952 U.S. App. LEXIS 3263 (C.A.D.C. 1952).

A will has no effect until admitted to probate and record by local authority. D.C. Code 1940, § 19-313. Norris v. Harrison, 198 F.2d 953, 1952 U.S. App. LEXIS 3263 (C.A.D.C. 1952).

§ 20-303. Order of priority for appointment of personal representative; persons excluded.

(a)(1) *General.* — The Court shall, except as provided in subsections (b) and (d), appoint personal representatives, successor personal representatives, and special administrators according to the following order of priority, with all persons in any one of the following paragraphs considered as a class:

(A) the personal representative or representatives named in a will admitted to probate;

(B) the surviving spouse, domestic partner, or children of an intestate decedent or the surviving spouse or domestic partner of a testate decedent;

(C) the residuary legatees;

(D) the children of a testate decedent;

(E) the grandchildren of the decedent;

(F) the parents of the decedent;

(G) the brothers and sisters of the decedent;

(H) the next of kin of the decedent;

(I) other relations of the decedent;

(J) the largest creditor of the decedent who applies for administration;

(K) any other person.

(2)(A) Relations of whole blood shall be preferred to those of half-blood in equal degree. Relations of half-blood shall be preferred to those of whole blood in a remoter degree.

(B) Relations descending shall be preferred to relations ascending in a collateral line. A nephew or niece shall be preferred to an uncle or aunt.

(C) A person may not be preferred in the ascending line beyond a parent or in the descending line below a grandchild.

(b) *Exclusions.* — Letters shall not be granted to a person who, at the time any determination of priority is made:

(1) has filed with the Register a declaration in writing renouncing the right to administer;

(2) is under the age of 18;

(3) has a mental illness as defined in section 21-501 or is under conservatorship as defined in section 21-1501 [repealed];

(4) has been convicted and not pardoned on the basis of innocence of a felony in the District of Columbia or of an offense in any other jurisdiction which, if committed in the District of Columbia, would be a felony and the sentence imposed for such conviction has not expired or has expired within the past 10 years;

(5) is an alien who has not been lawfully admitted for permanent residence;

(6) is a judge of any court established under the laws of the United States or is an employee of the Superior Court of the District of Columbia, the District of Columbia Court of Appeals or the District of Columbia Court System, unless such person is the surviving spouse or surviving domestic partner of the decedent or is related to the decedent within the third degree; or

(7) is a nonresident of the District of Columbia, unless such person files an irrevocable power of attorney with the Register designating the Register and

the Register's successors in office as the person upon whom all notices and process issued by a competent court in the District of Columbia may be served with the same effect as personal service, in relation to all suits or matters pertaining to the estate in which the letters are to be issued; in such cases the Register shall forward by registered or certified mail to the address of the personal representative, which shall be stated in the power of attorney, all notices and process served upon the Register pursuant to such designation.

(c) *Appointment within class.* — When there are several persons in a class eligible to receive letters, the Court may grant letters to one or more of them, as necessary or convenient for the proper administration of the estate; except that, subject to subsections (b) and (d), all personal representatives named in a will admitted to probate are entitled to letters.

(d) *Exception.* — The Court may, for good cause shown, vary from the order of priority to letters set forth in subsection (a).

(e) *Definitions.* — For the purposes of this section, the term "domestic partner" shall have the same meaning as provided in § 32-701(3).

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Apr. 4, 2006, D.C. Law 16-79, § 6, 53 DCR 1035; Mar. 2, 2007, D.C. Law 16-191, § 133, 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 20-303.

Effect of amendments. — D.C. Law 16-79, in subsec. (b)(6), substituted "surviving spouse or surviving domestic partner" for "surviving spouse"; added subsec. (e); and rewrote subsec. (a)(1)(B), which had read as follows: "(B) the surviving spouse or children of an intestate decedent or the surviving spouse of a testate decedent;"

D.C. Law 16-191, in subsec. (e), inserted the subsection heading.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.

Legislative history of Law 16-79. — Law 16-79, the "Domestic Partnership Equality Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-52 which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on December 6, 2005, and January 4, 2006, respectively. Signed by the Mayor on January 26, 2006, it was assigned Act No. 16-265 and transmitted to both Houses of Congress for its review. D.C. Law 16-79 became effective on April 4, 2006.

Legislative history of Law 16-191. — Law 16-191, the "Technical Amendments Act of 2006", was introduced in Council and assigned Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

CASE NOTES

Analysis

In general.
Judicial discretion.
Preference for kin.
Representative named in will.
Review.

In general.

Where neither pleadings nor oral argument brought to court's attention question that appointment of an outsider as administrator turned upon issue of whether there had been a declination by cousins, appointment of bank as administrator would be remanded for further proceedings. D.C. Code 1961, §§ 20-101, 20-208, 20-209, 20-214, 20-216. Gage v. Riggs Nat'l Bank, 320 F.2d 715, 1963 U.S. App. LEXIS 5206 (C.A.D.C. 1963).

Judicial discretion.

If trial court found that administrator had perpetrated fraud in securing appointment, trial court should exercise its discretion to determine whether fraud was a sound reason for it to depart from statutory scheme in designating administrator. D.C. Code 1951, §§ 20-101, 20-216. Dial v. Johnson, 259 F.2d 189, 1958 U.S. App. LEXIS 4720 (C.A.D.C. 1958).

District of Columbia Code provision prohibit-

ing granting of letters testamentary or of administration to person convicted of infamous crime is not discretionary, and if such disqualification is discovered after letters have been issued appointment should be revoked. D.C. Code 1951, §§ 20-101, 20-216. Dial v. Johnson, 259 F.2d 189, 1958 U.S. App. LEXIS 4720 (C.A.D.C. 1958).

Under District of Columbia statutes relating to appointment of administrators of decedents' estates, a court has discretion to select an administrator from outside the immediately preferred class, provided there is a sound reason to depart from the scheme of statutory preferences, but a next of kin who is not barred by specific statutory disqualification and who applies for letters of administration has a mandatory preference over a creditor or a person not in any preferred classification. D.C. Code 1951, §§ 20-101, 20-105, 20-201 to 20-219, 20-207, 20-216; Code Md.1951, art. 93, §§ 21-34. Randall v. Bockhorst, 232 F.2d 334, 1956 U.S. App. LEXIS 3026 (C.A.D.C. 1956).

Though court has power under District of Columbia statute to select administrator from outside immediately preferred class, exercise of that discretion must take into account scheme of statutory preferences, and court must have sound reason to depart therefrom. D.C. Code 1961, §§ 20-101, 20-204, 20-208, 20-216. In re Estate of Lucas, 229 F. Supp. 452, 1964 U.S. Dist. LEXIS 7061 (D.D.C1964).

Preference for kin.

If there is a next of kin who is not barred under a specific statutory disqualification and who applies for letters, a creditor or person not in any preferred classification may not be appointed. D.C. Code 1961, §§ 20-101, 20-216. Gage v. Riggs Nat'l Bank, 320 F.2d 715, 1963 U.S. App. LEXIS 5206 (C.A.D.C. 1963).

Under section of District of Columbia Code providing that, if intestate leaves widow or child, administration shall be granted either to widow or child, appointment of complete outsider as administrator was not justified, even though widow had failed in earlier proceeding to establish documents proffered by her as decedent's will and was seeking to charge estate with expense of that proceeding and relations between widow and decedent's child were strained. D.C. Code 1951, §§ 20-101, 20-204. Brooks v. De Lacy, 257 F.2d 227, 1958 U.S. App. LEXIS 4478 (C.A.D.C. 1958).

Where all next of kin were first cousins of deceased, and all male next of kin filed declinations, but only female next of kin applied for letters of administration, her application would be granted, and application of close friend and creditor of deceased for letters of administration would be denied. D.C. Code 1961, §§ 20-101, 20-204, 20-208, 20-216. In re Estate of Lucas, 229 F. Supp. 452, 1964 U.S. Dist. LEXIS 7061 (D.D.C1964).

Fact that male next of kin of deceased filed declinations and consented to appointment of creditor of deceased as administratrix did not divest female next of kin of equal degree of statutory right to appointment as administratrix. D.C. Code 1961, §§ 20-101, 20-204, 20-208, 20-216. In re Estate of Lucas, 229 F. Supp. 452, 1964 U.S. Dist. LEXIS 7061 (D.D.C1964).

Representative named in will.

Compliance with statute relating to competency of person to serve as executor is what is contemplated by the terms "legally competent" as used in statute requiring issuance of letters testamentary to executor named in will if he is legally competent. D.C. Code §§ 20-301, 20-351. Berryman v. Riggs Nat'l Bank, 401 F.2d 993, 1968 U.S. App. LEXIS 6041 (C.A.D.C. 1968).

Testator's choice should be granted letters testamentary unless he is disqualified under statute relating to competency of person to serve as executor or administrator. D.C. Code §§ 20-301, 20-351. Berryman v. Riggs Nat'l Bank, 401 F.2d 993, 1968 U.S. App. LEXIS 6041 (C.A.D.C. 1968).

Review.

Order removing personal representative of estate and appointing successor personal representative was final order that was immediately appealable, though residuary beneficiaries subsequently filed motion to amend the order, where the motion requested only explanations of why there was good cause for removing personal representative and why personal representative's wife had not been appointed as his successor. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Review of a probate court's exercise of its power to appoint a successor personal representative for an estate should be conducted under an abuse of discretion standard, since the appointment statute allows the probate court to vary from the statutorily prescribed order of preference in appointing a successor personal representative. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Personal representative of probate estate, after his removal from office, lacked standing to appeal probate court's appointment of successor personal representative; personal representative sustained no injury to his legal rights or

to any legally protected relationship from appointment of successor personal representative. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

§ 20-304. Petition for probate.

(a) *General.* — The petition for probate shall contain all knowledge or information of the petitioner with respect to:

(1) the name, domicile, and place and date of death of the decedent;

(2) the petitioner's name, address, age, citizenship, relationship to the decedent, interest in the estate, if any, and legal disability, if any;

(3) facts necessary to confer jurisdiction upon the Court;

(4) any other proceeding filed elsewhere regarding the decedent's estate;

(5) the character, location, and estimated value of the decedent's real and personal property and the total estimated debts and funeral expenses of the decedent;

(6) the names and addresses of all interested persons, and the names of all persons who are witnesses to any will referred to in subsection (c); and

(7) whether the decedent died intestate or testate with disclosure of further information pursuant to subsection (b) or (c), as appropriate.

(b) *Intestate.* — If the decedent died intestate, the petition shall state that a diligent search for a will has been made.

(c) *Testate.* — If the decedent died testate, the petitioner shall: (1) exhibit the original of the will with the petition, or exhibit a copy of the will if the original has already been filed; and (2) state whether the petitioner knows of any later will. If the petitioner is filing or has filed the original of the will, the petition shall state the manner in which the petitioner obtained the original of the will.

(d) *Explanation for lack of information.* — The petition shall state the reasons why any information required by subsection (a) cannot be furnished by the petitioner.

(e) *Request for abbreviated or standard probate or small estates proceeding.* — The petition shall indicate whether the petitioner requests an abbreviated probate, small estates or standard probate proceeding.

(f) *Request for court action.* — The petition may contain, as appropriate, and shall (without the need for the filing of any complaint) be sufficient to obtain the Court's action on, a request for one or more of the following:

(1) the admission to probate of any will exhibited with the petition;

(2) an order directing witnesses to an alleged will to appear and give testimony regarding its execution;

(3) an order requiring any person alleged to have custody of a will to deliver it to the Court;

(4) an order directing any interested person to show cause why the provisions of any lost or destroyed will should not be admitted to probate as expressed in the petition;

(5) a finding that the decedent died intestate;

(6) a request for the appointment of a supervised personal representative if the requirements of section 20-402 are met and supervision is desired, or for

the appointment of an unsupervised personal representative in other cases and, in each case, for the issuance of appropriate letters;

(7) any other relief that the petitioner may deem appropriate.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(j), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-304.

Emergency legislation. — For temporary amendment of § 4 of D.C. Law 10-241, see § 2 of the Probate Reform Act of 1994 Emergency Amendment Act of 1995 (D.C. Act 11-79, June 28, 1995, 42 DCR 3452).

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.

Legislative history of Law 10-241. — Law 10-241, the "Probate Reform Act of 1994," was introduced in Council and assigned Bill No. 10-649, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-386 and transmitted to both Houses of Congress for its review. D.C. Law 10-241 became effective on March 21, 1995.

Editor's notes. — Application of Law 10-241: Section 4 of D.C. Law 10-241, as amended by § 2 of D.C. Law 11-54, provided that the act shall be applicable to estates of decedents who died on or after July 1, 1995.

CASE NOTES

Mismanagement of material facts.

Personal representative of unsupervised estate did not misrepresent material facts, which would have otherwise required her removal, by failing to list decedent's bank accounts in her petition to become personal representative, as the personal representative was either the sole beneficiary or joint holder of such accounts, the accounts did not belong to the decedent at the time of her death and instead were nontestamentary accounts that personal representative was not required to include as part of the estate's assets, and irrespective of whether the contested accounts were estate assets personal representative transferred the funds in the accounts to the estate by the time she filed the verified inventory. Karim v. Gurley (In re Estate of Bates), 948 A.2d 518, 2008 D.C. App. LEXIS 245 (2008).

§ 20-305. Complaint to contest the validity of a will.

Except as provided in section 20-353(b), any person may file a verified complaint to contest the validity of a will within 6 months following notice by publication of the appointment or reappointment of a personal representative under section 20-704. The person filing the complaint shall give notice to all interested persons.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(k), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-305.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-304.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-304.

CASE NOTES

ANALYSIS

Jury trial.
Limitation of actions.
Pleadings.

Jury trial.

There is no statutory right to a jury trial in a will contest. In re Estate of Johnson, 820 A.2d 535, 2003 D.C. App. LEXIS 147 (2003).

Limitation of actions.

A cause of action for fraud accrues, for purposes of the statute of limitations, when the plaintiff has either actual notice of her cause of action or is deemed to be on inquiry notice, because if she had met her duty to act reasonably under the circumstances in investigating matters affecting her affairs, such investigation, if conducted, would have led to actual notice. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

The discovery rule, delaying the commencement of a limitations period, does not give the plaintiff carte blanche to defer legal action indefinitely if she knows or should know that she may have suffered injury and that the defendant may have caused her harm. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

What constitutes acting reasonably under the circumstances to investigate the problem, for purposes of the discovery rule delaying the commencement of the limitations period for a fraud action, is a highly factual analysis, but it usually requires that the injured party be ignorant of the fraud through no fault or want of diligence or care on his part. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

The focus of the discovery rule, which delays the commencement of a limitations period, is on when the plaintiff gained general knowledge that she had been injured, not on when she learned of the precise legal remedies for the injury. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Decedent's alleged common law wife was put on inquiry notice of alleged fraud regarding decedent's will, so that under the discovery rule the limitations period for her will contest began to run, when the alleged wife received notice of the will, where alleged wife, upon receiving such notice, had immediate suspicions regarding the will's authenticity because decedent, on the date of the will, had been unable to write, and she felt that he "would never have said [what was said in the will] about me." Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

The statute of limitations for civil actions for fraud does not apply to will contests under the probate code. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

The receipt, by testator's alleged common law wife, of notice of the discovery of additional heirs of testator did not "restart" the limitations period for a will contest by the alleged common law wife. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Six-month limitations period for a will contest did not apply to a woman's claim of status as testator's common law wife, because such claim did not contest the validity of the will, and a claim for a spouse's statutory share of the estate could be made regardless of the validity of the will. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

For limitations purposes, original filing date applied to party which was originally named a defendant to suit contesting validity of will, but pursuant to stipulation became a plaintiff. D.C. Code 1981, § 20-305. Easter Seal Soc'y for Disabled Children v. Berry, 627 A.2d 482, 1993 D.C. App. LEXIS 144 (1993).

Parties who filed complaint to contest validity of will on last day permitted by statute of limitation could have later filed amended verification without action being time barred. D.C. Code, § 20-305; Probate Rule 107(a). Easter Seal Soc'y for Disabled Children v. Berry, 627 A.2d 482, 1993 D.C. App. LEXIS 144 (1993).

Rule providing that when last day of time period is Saturday, Sunday or legal holiday the period runs until end of next day which is not

one of the aforementioned days was applicable to six-month period for filing complaint to contest validity of will; six-month period was not jurisdictional element of cause of action. D.C. Code 1981, § 20-305; Civil Rule 6(a). Easter Seal Soc'y for Disabled Children v. Berry, 627 A.2d 482, 1993 D.C. App. LEXIS 144 (1993).

Complaint to test validity of will was timely filed on following Tuesday, even though six-month filing period ended on Saturday, in light of intervening Sunday and Monday legal holiday. D.C. Code 1981, § 20-305; Civil Rule 6(a). Easter Seal Soc'y for Disabled Children v. Berry, 627 A.2d 482, 1993 D.C. App. LEXIS 144 (1993).

Statute providing that verified complaint to test validity of will may be filed within six months following notice by publication of appointment of personal representative was not statute of creation in sense that it created new right, for purpose of determining whether six-month period was subject to court rule providing that when last day of time period is Saturday, Sunday or legal holiday the period runs until end of next day which is not one of the aforementioned days. D.C. Code 1981, § 20-305; Civil Rule 6(a). Easter Seal Soc'y for Disabled Children v. Berry, 627 A.2d 482, 1993 D.C. App. LEXIS 144 (1993).

Even if six-month period in statute, which allows verified complaint to test validity of will to be filed within six months following notice by publication of appointment of personal representative, is jurisdictional, it does not follow that filing time limits cannot be extended if final day of period falls on Saturday. D.C. Code 1981, § 20-305; Civil Rule 6(a). Easter Seal Soc'y for Disabled Children v. Berry, 627 A.2d 482, 1993 D.C. App. LEXIS 144 (1993).

Six-month period in statute, which provides that verified complaint to test validity of will may be filed within six months following notice by publication of appointment of personal representative, constitutes statute of limitations. D.C. Code, § 20-305. Easter Seal Soc'y for Disabled Children v. Berry, 627 A.2d 482, 1993 D.C. App. LEXIS 144 (1993).

Pleadings.

Beneficiary under later will waived review of issue, raised for the first time on appeal, of whether appeal by proponent of earlier will was moot due to her failure to file a timely complaint challenging the validity of the later will; beneficiary did not plead this affirmative defense in either its complaint or in its motion for summary judgment. D.C. Code 1981, § 20-305. In re Estate of Burleson, 738 A.2d 1199, 1999 D.C. App. LEXIS 207 (1999).

Civil rule allowing verification of complaint to be made by attorney when corporation is party applies in probate proceeding involving contest to validity of will, since probate rule provides that superior court civil rules apply in will contest action, and no provisions in probate statute preclude litigating attorney for corporation from verifying complaint. D.C. Code 1981, § 20-305; Civil Rule 9-I(c); Probate Rule 107(a). Easter Seal Soc'y for Disabled Children v. Berry, 627 A.2d 482, 1993 D.C. App. LEXIS 144 (1993).

Subchapter II. Abbreviated Probate Proceeding.

§ 20-311. Nature of proceeding.

(a) An abbreviated probate proceeding is a proceeding for the probate of a will or a determination of a decedent's intestacy and for the appointment of a personal representative. This proceeding is instituted when an interested person files a petition for an abbreviated probate proceeding with the Court in accordance with the provisions of section 20-304. This proceeding may be conducted without the prior notice required for standard probate under section 20-323.

(b) The finality of abbreviated probate shall be governed by section 20-331.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(l), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-311.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-304.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-304.

CASE NOTES

ANALYSIS

In general.
Interested persons.

In general.

Provisions of Probate Reform Act require appointment of personal representative to dispose of decedent's property and abolish common-law doctrine allowing nonjudicial disposition of decedent's estate. D.C. Code 1981, §§ 19-301, 20-101 et seq., 20-105, 20-109, 20-357. Richardson v. Green, 528 A.2d 429, 1987 D.C. App. LEXIS 384 (1987).

Interested persons.

The disallowance of landlord's claim against his former tenant's estate for unpaid rent and damages in the amount of $24,528 by the personal representatives in abbreviated probate proceedings did nothing to alter landlord's status as an "interested person" who was entitled to mandatory standard probate proceedings; the claim was neither barred by failure to properly present the claim, nor discharged through payment by the estate. D.C. Code 1981, §§ 20-311, 20-321, 20-322, 20-704. In re Estate of Wilson, 743 A.2d 719, 2000 D.C. App. LEXIS 26 (2000).

Landlord who filed claim against his former tenant's estate for unpaid rent and damages in the amount of $24,528 was an "interested person" who was entitled to mandatory standard probate, though abbreviated probate proceedings were initiated, where landlord filed his claim within six months of the published notice of appointment. D.C. Code 1981, §§ 20-311, 20-321, 20-322, 20-704, 20-903(a)(1), 20-905. In re Estate of Wilson, 743 A.2d 719, 2000 D.C. App. LEXIS 26 (2000).

§ 20-312. Action on petition.

(a) *General.* — Upon a request for abbreviated probate filed in accordance with section 20-304, the Court shall appoint one or more personal representatives, except as provided in section 20-322. The appointment of a personal representative shall constitute an Order for unsupervised administration, unless the Order specifically provides for supervised administration as provided in section 20-402. In no event, however, shall the appointment of a personal representative be delayed pending the Court's decision with regard to whether the administration will be supervised or unsupervised.

(b) *Wills.* — In the case of a petition to admit a will to abbreviated probate, due execution of the will shall be presumed and the Court may admit a will to probate either: (1) if the will appears to have been duly executed and contains a recital by attesting witnesses of facts constituting due execution; or (2) upon the verified statement of any person with personal knowledge of the circumstances of execution, whether or not the person was in fact an attesting witness, reciting facts showing due execution of the will.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(m), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-312.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-304.

Editor's notes. — Application of 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-304.

CASE NOTES

ANALYSIS

Attestation.
In general.

Attestation.

Testator's purported will lacked proper attestation and, therefore, was void; statute required that two or more witnesses attest and

subscribe to will in testator's presence, will only bore testator's signature and raised seal of notary public, and affidavits from non-attesting witnesses, who could not verify that they witnessed two attesting witnesses sign will in presence of testator, failed to satisfy statutory requirements for due execution of will. In re Estate of Henneghan, 45 A.3d 684, 2012 D.C. App. LEXIS 299 (2012).

In general.

Petition by personal representative for rule to show cause seeking recovery of property of estate could properly be deemed mistakenly labeled complaint where petition was first document filed, and defendant was put on notice of claim against him. D.C. Code 1981, § 20-702; Civil Rules 3, 8(a, e, f). Estate of Presgrave v. Stephens, 529 A.2d 274, 1987 D.C. App. LEXIS 395 (1987).

Subchapter III. Standard Probate Proceeding.

§ 20-321. Nature of proceeding.

A standard probate proceeding is a proceeding for the probate of a will or a determination of the decedent's intestacy, particularly when due execution of a will cannot be presumed under section 20-312, and for the appointment of a personal representative. This proceeding is instituted when an interested person or creditor files a petition for a standard probate proceeding with the Court in accordance with the provisions of section 20-304; and the filing of a complaint shall not be required for these purposes. This proceeding is conducted after notice as provided in section 20-323. If no petition for abbreviated or standard probate is filed within a reasonable time, the Register, with the approval of the Court, may file a petition for standard probate.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(n), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-321.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-304.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-304.

CASE NOTES

Necessity of administration.

Provisions of Probate Reform Act require appointment of personal representative to dispose of decedent's property and abolish common-law doctrine allowing nonjudicial disposition of decedent's estate. D.C. Code 1981, §§ 19-301, 20-101 et seq., 20-105, 20-109, 20-357. Richardson v. Green, 528 A.2d 429, 1987 D.C. App. LEXIS 384 (1987).

§ 20-322. When mandatory.

A proceeding for standard probate shall be instituted:

(a) if, at any time before abbreviated probate,

(1) an interested person or creditor makes a request; or

(2) it appears to the Court that the petition for abbreviated probate is materially incomplete or incorrect in any respect; or

(b) in accordance with the provisions of section 20-331.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-322.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.

CASE NOTES

In general.

The disallowance of landlord's claim against his former tenant's estate for unpaid rent and damages in the amount of $24,528 by the personal representatives in abbreviated probate proceedings did nothing to alter landlord's status as an "interested person" who was entitled to mandatory standard probate proceedings; the claim was neither barred by failure to properly present the claim, nor discharged through payment by the estate. D.C. Code 1981, §§ 20-311, 20-321, 20-322, 20-704. In re Estate of Wilson, 743 A.2d 719, 2000 D.C. App. LEXIS 26 (2000).

Landlord who filed claim against his former tenant's estate for unpaid rent and damages in the amount of $24,528 was an "interested person" who was entitled to mandatory standard probate, though abbreviated probate proceedings were initiated, where landlord filed his claim within six months of the published notice of appointment. D.C. Code 1981, §§ 20-311, 20-321, 20-322, 20-704, 20-903(a)(1), 20-905. In re Estate of Wilson, 743 A.2d 719, 2000 D.C. App. LEXIS 26 (2000).

Trial court had no discretion and was required to set aside abbreviated probate proceedings, and initiate standard probate proceedings, upon landlord's proper presentation of claim against his former tenant's estate for unpaid rent and damages in the amount of $24,528. D.C. Code 1981, §§ 20-322(b), 20-331(a). In re Estate of Wilson, 743 A.2d 719, 2000 D.C. App. LEXIS 26 (2000).

§ 20-323. Notice of request for standard probate; form.

(a) *When given.* — A person filing a petition for standard probate shall promptly give notice to all known interested persons. In addition, the petitioner shall publish a notice once a week for 2 successive weeks in a newspaper of general circulation in the District of Columbia and in any other publication the Court may provide by Rule.

(b) *Form of notice.* — The notice required by this section shall be in the form prescribed by the Rules.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-323.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.

§ 20-324. Action on petition.

In a standard probate proceeding:

(1) Proof of due execution shall be made by affidavit of the witnesses as provided in paragraph (3) of this section unless the Court orders otherwise.

(2) After proof of due execution, the Court shall enter an order admitting the will to probate or determining that the decedent died intestate. At this time, the Court shall also appoint or reappoint one or more personal representatives, may order that the administration will be supervised as provided in section 20-402, and, if appropriate, revoke, modify, or confirm any action taken at any prior abbreviated probate, small estates or standard probate proceeding.

(3) Affidavits of due execution shall be in substantially the following form:

On this _____ day of _____ 19 _____, _____ personally appeared and, under oath answered the following questions as follows:

1. Were you one of the witnesses who signed the attached written document which is dated _____ and is said to be the last will and testament of _____ of the District of Columbia who is now dead? (Please initial appropriate box.) _____ Yes _____ No
2. Did _____ sign the attached document while
(the testator)
in your presence? _____ Yes _____ No
3. Did _____ say the attached document was to be a
(the testator)
part of his will? _____ Yes _____ No
4. At the time he signed the attached document, did _____
(the testator)
seem to you to be of sound mind and aware of what he was doing? _____ Yes _____ No
5. Did _____ ask you to sign the attached document
(the testator)
as a witness? _____ Yes _____ No
6. When you signed the attached document as a witness, were _____
(the testator)
and all of the other witnesses who signed the document present? _____ Yes _____ No
7. Were you present when each of the other witnesses signed the attached document? _____ Yes _____ No
8. Did _____ ask the other people who signed the
(the testator)
attached document to do so as witnesses? _____ Yes _____ No
9. Was _____ present when each of the witnesses signed
(the testator)
the attached document? _____ Yes _____ No
10. What is your date of birth? _____
11. Do you know of any will or codicil of _____ other than the
(the testator)
attached document? _____ Yes _____ No

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(o), 42 DCR 63; Apr. 9, 1997, D.C. Law 11-255, § 19(b), 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 20-324.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-304.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective April 9, 1997.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-304.

Subchapter IV. Finality.

§ 20-331. Finality of abbreviated and standard probate proceedings.

(a) An abbreviated probate proceeding shall be set aside if, within 6 months after notice of the appointment of the personal representative pursuant to section 20-704, an interested person makes a request for a standard probate proceeding.

(b) A standard probate proceeding may be reopened if, within 6 months after the notice of appointment of the personal representative pursuant to section 20-704: (1) An interested person makes a request; and (2) the Court finds that:

(A) the notice provided in section 20-704 was not given to such interested person and such interested person did not have actual notice of the petition for probate;

(B) there was a material mistake or substantial irregularity in the prior probate proceeding; or

(C) the proponent of a later offered will, in spite of the exercise of reasonable diligence, was actually unaware of such will's existence at the time of the prior probate proceeding.

(c) Except as provided in section 20-305 and this section, an abbreviated probate proceeding shall be final and binding as to all interested persons.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(p), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-331.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-304.

Editor's notes. — Application of 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-304.

Subchapter V. Foreign Personal Representatives.

§ 20-341. Requirements.

(a) A foreign personal representative of a nondomiciliary shall not be required to obtain letters in the District of Columbia for any purpose.

(b) A foreign personal representative administering an estate which has property located in the District of Columbia shall file with the Register a copy of the appointment as personal representative and a copy of the decedent's will, if any, authenticated pursuant to 28 U.S.C. sec. 1738.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-341.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.

CASE NOTES

Appointment of representative.

Estate and survivor of Iraqi citizens could act as citizens' personal representatives under District of Columbia law in actions against government contractor which hired private-security corporation whose personnel allegedly shot and killed citizen in Iraq, provided that estate and survivor filed with District's Register of Wills the Iraqi legal documents appointing them as representatives. Estate of Manook v. Research Triangle Inst., Int'l, 693 F.Supp.2d 4, 2010 U.S. Dist. LEXIS 17257 (2010).

§ 20-342. Powers of foreign personal representative.

A foreign personal representative may exercise all the powers of such office and may sue and be sued in the District of Columbia, subject to any statute or rule relating to nonresidents.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-342.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.

CASE NOTES

Appointment of representative.

Estate and survivor of Iraqi citizens could act as citizens' personal representatives under District of Columbia law in actions against government contractor which hired private-security corporation whose personnel allegedly shot and killed citizen in Iraq, provided that estate and survivor filed with District's Register of Wills the Iraqi legal documents appointing them as representatives. Estate of Manook v. Research Triangle Inst., Int'l, 693 F.Supp.2d 4, 2010 U.S. Dist. LEXIS 17257 (2010).

§ 20-343. Publication and claims of creditors.

(a) *Publication.* — A foreign personal representative of a decedent who owned any property located in the District of Columbia shall publish once a week for 3 successive weeks a notice in a newspaper of general circulation in the District of Columbia and any other publication as the Court may provide by Rule. This notice shall include an announcement of such representative's appointment, name and address, agent's name and address in the District of Columbia for service of process on file with the Register, the name of the court that made such appointment, a brief description of all real property owned by the decedent in the District of Columbia and, if appropriate, a statement that the decedent owned personal property in the District. If the property located in the District of Columbia is real property (not leasehold), the notice shall also state that claims against the estate may be filed with the Register at any time within 6 months from the date of first publication. The foreign personal representative shall record in the Register's office a certification that such notice was published.

(b) *Personal or leasehold property.* — With regard to personal or leasehold property located in the District of Columbia, a foreign personal representative may remove, lease, or transfer the property:

(1) upon the first publication of notice pursuant to subsection (a) if such representative holds letters from:

(A) a jurisdiction within the Metropolitan Area; or

(B) a jurisdiction outside the Metropolitan Area and such representa-

tive posts a bond with a penalty amount equal to the value of the property to extend for the 6 months during which a creditor may file a claim; or

(2) six months after the first publication of notice pursuant to subsection (a) if:

(A) no claims are filed with the Register during this time; or

(B) all claims of creditors have been released or finally determined in favor of the personal representative.

(c) *Real property.* — With regard to real property located in the District of Columbia, a foreign personal representative may lease or transfer the property if such representative:

(1) posts bond with a penalty amount equal to the value of the property and makes first publication of notice pursuant to subsection (a); or

(2) allows 6 months to pass after the first publication required by subsection (a) and (A) no claims are filed with the Register during this time or (B) all claims of creditors have been released or finally determined in favor of the personal representative.

(d) *Statement of claim.* — Any creditor may, within 6 months from the date of the first publication of notice, file a written statement of claim, pursuant to section 20-905, with the Register and deliver or mail a copy of the statement to the personal representative. The Register shall record all such claims and releases. Unless a release of a validly recorded claim has been recorded or the claim has finally been determined in favor of the personal representative, such claim shall constitute a lien against all real property owned by the decedent in the District of Columbia at death for a period of 12 years from date of death: Except, that if the personal representative is empowered to sell the property such claim shall constitute a lien against the net proceeds from the sale.

(e) *No other action necessary.* — It shall not be necessary for the foreign personal representative to institute any other proceedings before the Register with respect to any assets subject to the jurisdiction of the District of Columbia.

(f) *Responsibility for payment of death taxes.* — This section shall not be construed to relieve the foreign personal representative of the responsibility for paying all death taxes due the District of Columbia.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Oct. 16, 2006, 120 Stat. 2024, Pub. L. 109-356, § 111(c).)

Prior Codifications. — 1981 Ed., § 20-343.

Effect of amendments. — Pub. L. 109-356, in subsec. (d), substituted "The Register shall record all such claims and releases." for "The Register shall maintain a book known as the 'Claims Against Nonresident Decedents' in which all such claims and releases thereof shall be recorded."

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.

CASE NOTES

In general.

Creditors who filed their claims in Puerto Rico were deemed to have a lien on decedent's real property in the District of Columbia and, therefore, were on the same footing as creditor who had filed claim in the District of Columbia; the foreign personal representative had actual knowledge of the claims filed in Puerto Rico. In re Estate of Monge, 841 A.2d 769, 2004 D.C. App. LEXIS 40 (2004).

§ 20-344. Right of heir or legatee.

In the event a foreign personal representative fails to transfer the title to real or leasehold property located in the District of Columbia to the person or persons legally entitled to such property, within a reasonable time, the Court may direct the transfer of title to such person or persons if: (a) the will, if any, or a copy authenticated pursuant to 28 U.S.C. sec. 1738, is filed in the Register's office; (b) notice, approved by the Court, has been published indicating that the decedent died owning the real or leasehold property; and (c) all claims of creditors, if any, have been satisfied.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-344.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.

Subchapter VI. Small Estates.

§ 20-351. General.

If the property of a decedent subject to administration in the District of Columbia has a value of $40,000 or less, the property may be administered as a small estate in accordance with the provisions of this subchapter.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(q), 42 DCR 63; Apr. 27, 2001, D.C. Law 13-292, § 901, 48 DCR 2087.)

Prior Codifications. — 1981 Ed., § 20-351.
Effect of amendments. — D.C. Law 13-292 substituted "$40,00" for "$15,000".
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.
Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-304.
Legislative history of Law 13-292. — Law 13-292, the "Omnibus Trusts and Estates Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-298, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 26, 2001, it was assigned Act No. 13-599 and transmitted to both Houses of Congress for its review. D.C. Law 13-292 became effective on April 27, 2001.
Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-304.
Section 1102 of D.C. Law 13-292 provided: "Sec. 1102. Applicability. For the purposes of Title 5 and Title 9 and sections 801(b), 805, and 806 of Title 8 of this act, the provisions relating to the administration of decedents' estates shall apply only to the estates of decedents who die on or after the effective date of this act."

CASE NOTES

ANALYSIS

In general.
Necessity of administration.

In general.
Each of the statutory methods for beginning the administration of an estate, whether testate or intestate, requires someone to petition the court for the appointment of a personal representative. Richardson v. Green, 113 WLR 1973 (Super. Ct. 1985).

Necessity of administration.
Provisions of Probate Reform Act require appointment of personal representative to dispose of decedent's property and abolish common-law doctrine allowing nonjudicial disposition of decedent's estate. D.C. Code 1981,

§§ 19-301, 20-101 et seq., 20-105, 20-109, 20-357. Richardson v. Green, 528 A.2d 429, 1987 D.C. App. LEXIS 384 (1987).

§ 20-352. Petition.

Any person eligible for appointment as the personal representative of an estate pursuant to section 20-303 may file a verified petition for administration of a small estate. Such petition shall contain, in addition to the information required by section 20-304:

(a) A statement that the petitioner has made a diligent search to discover all property and debts of the decedent;

(b) A list of the known creditors of the decedent, with the amount of each claim, including contingent and disputed claim; and

(c) A statement of any legal proceedings pending in which the decedent was a party.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-352.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.

CASE NOTES

ANALYSIS

In general.
Necessity of administration.

In general.

Each of the statutory methods for beginning the administration of an estate, whether testate or intestate, requires someone to petition the court for the appointment of a personal representative. Richardson v. Green, 113 WLR 1973 (Super. Ct. 1985).

Necessity of administration.

Provisions of Probate Reform Act require appointment of personal representative to dispose of decedent's property and abolish common-law doctrine allowing nonjudicial disposition of decedent's estate. D.C. Code 1981, §§ 19-301, 20-101 et seq., 20-105, 20-109, 20-357. Richardson v. Green, 528 A.2d 429, 1987 D.C. App. LEXIS 384 (1987).

§ 20-353. Proceedings after petition.

(a) *Determinations on petition.* — If the Court finds that the petition and any additional information filed under this subchapter is accurate, it shall:

(1) appoint a personal representative of the small estate;

(2) direct the immediate payment of the allowable funeral expenses as provided in section 20-906 and the family allowance as provided in section 19-101 [repealed];

(3) direct the sale of property as may be necessary to satisfy funeral expenses and the family allowance; and

(4) if it appears that there will be any property remaining after payment of funeral expenses and there is no family allowance payable, admit the will, if any, to probate and direct that notice be given in accordance with subsection (b).

(b) *Notice.* — If the Court directs that notice be given, notice shall be given

once in the form required by section 20-704; except, that the period within which claims must be filed or objection must be made to contest the validity of the will or the small estates proceeding or the appointment of the personal representative shall be 30 days from the date of publication of notice.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-353.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.

§ 20-354. Duties of personal representatives.

(a) *Attorney; bond; compensation.* — No person appointed as a personal representative in accordance with section 20-353 shall be required to be represented by an attorney or to give bond or be entitled to receive any commission for the performance of duties as personal representative.

(b) *Distribution.* — If notice is required and 30 days have expired since the publication of notice as provided in section 20-353(b), the personal representative shall file proof of publication of the notice and a verified list of all claims, including contingent and disputed claims, and the amount of the claims filed since the original petition. The Court shall hear any objections filed pursuant to the notice and, if satisfied that all action taken pursuant to this subchapter is proper, shall direct the personal representative to pay all proper claims and expenses and to distribute the net estate either in accordance with the will or, if the decedent died intestate, to the decedent's heirs.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-354.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.

§ 20-355. After-discovered property.

The personal representative shall report to the Court immediately, by verified supplemental petition, any property of the decedent discovered after the filing of the petition. If the after-discovered property increases the value of all property of the decedent to an amount greater than the allowable funeral expenses (and there is no family allowance payable) but less than $15,000, the Court shall admit the will, if any, to probate and direct that notice be given in accordance with section 20-353(b). If the after-discovered property increases the value of all property of the decedent to more than $15,000, there shall be no further proceedings under this subchapter, and administration shall proceed under the other provisions of this title.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(r), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-355.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.
Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-304.
Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-304.

§ 20-356. Applicability of other provisions of title.

Except to the extent inconsistent with this subchapter, all the other provisions of this title shall apply to small estates.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-356.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.

§ 20-357. Exception for motor vehicles.

If the only property of a decedent is not more than 2 motor vehicles, the Mayor may transfer title to the motor vehicles in accordance with section 50-1501.02(d). If title is transferred under this section, administration of the estate of the decedent is not necessary.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-357.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-301.

CASE NOTES

Necessity of administration.

Provisions of Probate Reform Act require appointment of personal representative to dispose of decedent's property and abolish common-law doctrine allowing nonjudicial disposition of decedent's estate. D.C. Code 1981, §§ 19-301, 20-101 et seq., 20-105, 20-109, 20-357. Richardson v. Green, 528 A.2d 429, 1987 D.C. App. LEXIS 384 (1987).

The only exception to the requirement of the appointment of a personal representative in § 20-105 is this section, which provides that if the property of the decedent is not more than 2 cars, the mayor may transfer title to same and administration of the estate may be dispensed with. Richardson v. Green, 113 WLR 1973 (Super. Ct. 1985).

CHAPTER 4. SUPERVISED AND UNSUPERVISED ADMINISTRATION.

Sec.
20-401. Supervised administration; in general.
20-402. Supervised administration; procedure.
20-403. Supervised administration; changes and effect.
20-404. Supervised administration; powers of personal representative.
20-405. Supervised administration; interim orders; distribution and closing orders.
20-406. Unsupervised personal representative.

§ 20-401. Supervised administration; in general.

(a) Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the Court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A supervised personal representative is responsible to the Court, as well as to the interested parties, and is subject to directions concerning the estate made by the Court on its own motion or on the motion of any interested party. Except as otherwise provided in this chapter, or as otherwise ordered by the Court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

(b) Unsupervised administration differs from supervised administration only in the following ways: in an unsupervised administration, the personal representative is not required to file any inventories or accounts with the Court, is not subject to provisions of this title which expressly apply only to a personal representative in a supervised administration, and, in general, is subject only to any order of the Court rendered upon a failure to satisfy filing requirements imposed by this title or a finding of good cause after a narrow issue or question has been brought to the Court's attention by either the personal representative or an interested person, but otherwise is not subject to continuing Court supervision.

(Mar. 21, 1995, D.C. Law 10-241, § 3(t), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-401.

Emergency legislation. — For temporary amendment of § 4 of D.C. Law 10-241, see § 2 of the Probate Reform Act of 1994 Emergency Amendment Act of 1995 (D.C. Act 11-79, June 28, 1995, 42 DCR 3452).

Legislative history of Law 10-241. — Law 10-241, the "Probate Reform Act of 1994," was introduced in Council and assigned Bill No. 10-649, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-386 and transmitted to both Houses of Congress for its review. D.C. Law 10-241 became effective on March 21, 1995.

Editor's notes. — Application of Law 10-241: Section 4 of D.C. Law 10-241, as amended by § 2 of D.C. Law 11-54, provided that the act shall be applicable to estates of decedents who died on or after July 1, 1995.

§ 20-402. Supervised administration; procedure.

(a) A prayer for supervised administration may be made in the petition for probate. The Court shall order supervised administration of a decedent's estate only:

(1) If the decedent's will directs supervised administration;

(2) If the decedent's will directs unsupervised administration, but for good cause shown the Court finds that supervised administration is necessary for the protection of persons interested in the estate; or

(3) In other cases where, for good cause shown, the Court finds that supervised administration is necessary under the circumstances which the Court shall specify.

(b) In no event shall the appointment of a personal representative be delayed pending the Court's decision pursuant to subsection (a) of this section. Thus, whenever the Court must make a decision under subsection (a)(2) or (a)(3) of this section, the Court shall appoint the personal representative in unsupervised administration; thereafter, an Order for supervised administration shall convert the proceeding to supervised administration.

(Mar. 21, 1995, D.C. Law 10-241, § 3(t), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-402.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-401.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-401.

§ 20-403. Supervised administration; changes and effect.

(a) The filing of signed waivers by all interested persons in accordance with section 20-731 shall be treated for all purposes as a change to unsupervised administration, but the filing of a subsequent demand for the filing of inventories and accounts by any such interested person shall be treated as a change back to supervised administration.

(b) A petition for supervised administration may be filed by any interested person or by a personal representative at any time before the termination of a probate proceeding; similarly, the Court may initiate such a proceeding upon good cause shown. In either event, after notice to interested persons and a hearing (unless the hearing is waived by both the petitioner and the personal representative, or by the interested persons if petitioner is the personal representative), the Court may order supervised administration, applying the same standards as under section 20-402. In no event, however, shall any Court Order be deemed to convert the proceeding to a supervised administration unless the Order expressly so provides. The filing of such petition does not affect any powers and duties of the personal representative unless they are expressly restricted by the Court pending the hearing or final Order.

(c) In the event of a change from one form of administration to another pursuant to this title, such change shall be prospective only. Except in the case of fraud, no action of the personal representative shall be set aside by the Court solely by reason of a change from one form of administration to another.

(Mar. 21, 1995, D.C. Law 10-241, § 3(t), 42 DCR 63; Apr. 18, 1996, D.C. Law 11-110, § 25(b), 43 DCR 530.)

Prior Codifications. — 1981 Ed., § 20-403.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-401.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-401.

§ 20-404. Supervised administration; powers of personal representative.

Unless restricted by the Court for good cause shown, a supervised personal representative has, without any interim order approving exercise of a power, all powers of personal representatives under this title. Any restriction on the power of a personal representative ordered by the Court must be endorsed on the letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.

(Mar. 21, 1995, D.C. Law 10-241, § 3(t), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-404.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-401.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-401.

§ 20-405. Supervised administration; interim orders; distribution and closing orders.

Unless otherwise ordered by the Court, supervised administration is terminated by order in accordance with the provisions of section 20-1301. Interim orders granting other relief may be issued by the Court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.

(Mar. 21, 1995, D.C. Law 10-241, § 3(t), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-405.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-401.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-401.

§ 20-406. Unsupervised personal representative.

A personal representative appointed without court supervision having been ordered, and any other personal representative except during any period for which court supervision has been ordered, is not subject to continuing court supervision except as provided in section 20-107 or otherwise in this title, and is not subject to sections of this title applicable only to supervised personal representatives or estates.

(Mar. 21, 1995, D.C. Law 10-241, § 3(t), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-406.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-401.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-401.

CHAPTER 5. THE PERSONAL REPRESENTATIVE AND SPECIAL ADMINISTRATOR; APPOINTMENT, CONTROL AND TERMINATION OF AUTHORITY.

Subchapter I. Appointment and Issuance of Letters; Bond; Accrual of Duties and Powers.

Sec.
20-501. Conditions of appointment.
20-502. Bond; form.
20-503. Issuance and content of letters.
20-504. Form of letters.
20-505. Time of accrual of duties and powers.

Subchapter II. Several Personal Representatives

20-511. Powers and duties of successor personal representative.
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Subchapter IV. Special Administrator

20-531. Appointment; qualifications.
20-532. Bond.
20-533. Powers and duties.
20-534. Termination of appointment.

Subchapter I. Appointment and Issuance of Letters; Bond; Accrual of Duties and Powers.

§ 20-501. Conditions of appointment.

As a condition to appointment, a personal representative, whether in a supervised or unsupervised administration, shall file (a) a statement of acceptance of the duties of the office, (b) any required bond, and (c) a written consent to personal jurisdiction in any action brought in the District of Columbia against such personal representative, where service of process is effected pursuant to the rules of the Court at such representative's address shown in the proceedings or, in the case of a nonresident personal representative, pursuant to the provisions of section 20-303(b)(7).

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(u), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-501.

Emergency legislation. — For temporary amendment of § 4 of D.C. Law 10-241, see § 2 of the Probate Reform Act of 1994 Emergency Amendment Act of 1995 (D.C. Act 11-79, June 28, 1995, 42 DCR 3452).

Legislative history of Law 3-72. — Law 3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-241. — Law 10-241, the "Probate Reform Act of 1994," was introduced in Council and assigned Bill No. 10-649, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-386 and transmitted to both Houses of Congress for its review. D.C. Law 10-241 became effective on March 21, 1995.

Editor's notes. — Application of Law 10-241:

10-241: Section 4 of D.C. Law 10-241, as amended by § 2 of D.C. Law 11-54, provided

that the act shall be applicable to estates of decedents who died on or after July 1, 1995.

CASE NOTES

Provisions of will.

Court generally enforces exculpatory or immunity clause that relieves personal representative from personal liability for losses resulting from failure to meet required standard of care, unless clause is contrary to statute or public policy, and exculpatory clause that excuses self-dealing or attempts to limit liability for breaches of duty committed in bad faith, intentionally, or with reckless indifference to interest of beneficiary, is generally considered to be against public policy. Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

Provision of will which granted plenary powers to personal representative and purportedly made him unaccountable to court conflicted with Probate Code and was thus invalid. D.C. Code 1981, § 20-101 et seq. Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

§ 20-502. Bond; form.

(a) *When required.* — Unless excused from giving bond by the decedent's will or written waiver of all interested persons, each personal representative shall execute a bond to the District of Columbia for the benefit of interested persons and creditors with a surety or sureties approved by the Court. Whenever a personal representative is excused from giving a bond by the decedent's will, or by the written waiver of 1 or more interested persons, no bond shall be given (except as provided below). In the absence of a waiver by the testator, the interest of any interested person who does not waive bond shall be protected but no waiver of bond shall be permitted on behalf of a person who is not a competent adult except as provided in section 20-101(d)(2)(C).

(a-1) *Demand for bond.* — Any person having an interest in the estate worth in excess of $1,000, or any creditor having a claim in excess of $1,000, may make a written demand that a personal representative give bond in an amount not exceeding the value of the person's or creditor's interest in the estate. The demand must be filed with the Register and a copy mailed to the personal representative, if appointment and qualification have occurred. Upon a request for bond, the Court may set a hearing to determine if bond is required.

(b)(1) *When not required.* — Notwithstanding the provisions of subsection (a), no bond shall be required of banks and trust companies authorized under District of Columbia laws to act as personal representatives and national banks, except as otherwise provided by law or Court Rule.

(2) No bond shall be required for any period following the distribution of all known assets and satisfaction of all known claims.

(c) *Surety.* — The surety on any bond required by subsection (a) may be any corporation authorized to act as a surety in the District of Columbia. All sureties and the personal representative shall be jointly and severally liable on the bond, unless otherwise ordered by the Court.

(d)(1) *Penalty.* — The penalty sum of any bond required by subsection (a) shall be fixed by the Court in an amount not exceeding the probable maximum value of the personal and D.C. real property of the estate at any time during administration.

(2) Repealed.

(3) The Court may permit the penalty sum of the bond to be reduced by the amount of cash belonging to the estate that is deposited with a bank, trust company, savings and loan association, building association, building and loan association, or federal savings and loan association approved by the Court in an account expressly made subject to withdrawal only in a manner that is approved by the Court.

(3A) The Court may permit the penalty sum of the bond to be reduced by the value of any real or personal property which, at the request of the personal representative or pursuant to Court Order upon good cause shown, cannot be sold or distributed without prior Court authorization.

(4) The penalty sum may be increased or decreased by the Court at its discretion for good cause at any time during administration.

(e) *Filing; certified copy.* — Every bond executed by a personal representative shall be filed in the office of the Register. Any person may obtain from the Register a certified copy of such bond.

(f) *Premium payable out of estate.* — Bond premiums shall be chargeable against the property of the estate.

(g) *Form of bond.* — A bond shall be in the form prescribed by the Rules.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(v), 42 DCR 63; Mar. 24, 1998, D.C. Law 12-81, § 13(a), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 20-502.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-501.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-501.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-501.

CASE NOTES

ANALYSIS

Actions on bond.
Amount of bond.
In general.
Necessity for bond.
New or additional bond.

Actions on bond.

The giving of a special undertaking by executor creates a personal obligation to creditors and legatees not present where a general bond is given. Cashell v. Eslin, 55 F.Supp. 747, 1944 U.S. Dist. LEXIS 2287 (D.D.C1944).

Nominal bond that was intended only to secure payment of estate's unsecured debts and inheritance taxes could not be used to pay for losses caused by malfeasance of estate's former personal representative. D.C. Code 1981, § 20-502(a); Probate Rule 104(a). In re Estate of Dickson, 736 A.2d 1007, 1999 D.C. App. LEXIS 195 (1999).

Amount of bond.

The administrator should give a bond sufficiently large to cover the amount which is in equity due the representatives from the government, where there is a bill in congress for an appropriation. Richardson v. Cameron, 20 F.Cas. 706, 1854 U.S. App. LEXIS 549 (1854).

In general.

Amount of judgment against personal representative's surety, in action for accounting, could not exceed amount of the bond. In re

Estate of Spinner, 717 A.2d 362, 1998 D.C. App. LEXIS 179 (1998).

Necessity for bond.

The orphans' court of Alexandria county, D.C., cannot in any case grant letters testamentary without security, unless the testator's visible personal estate is sufficient to pay all the debts. Ex parte Lee, 15 F.Cas. 134, 1842 U.S. Dist. LEXIS 73 (1806).

New or additional bond.

Under Act Cong. Jan. 17, 1887, 24 Stat. 361, providing that where it appears that an executor who has given bond is wasting the assets of the estate, or that the assets in his hands are in danger of being lost, wasted, or misappropriated, the court shall have power to remove such executor or to require him to give additional bond, etc., it is discretionary with the court of original probate jurisdiction to require an additional bond, and no appeal will lie from its action. Cropper v. McLane, 6 App.D.C. 119, 1895 U.S. App. LEXIS 3579 (1895).

After an administrator has been appointed, and the court subsequently is informed that a large sum of money is likely to come into his possession, it will order the administrator's removal, unless he gives further bonds, the amount of the bonds to be discretionary and decided by the orphans' court. Taylor v. Sherburne, 23 F.Cas. 805, 1842 U.S. App. LEXIS 589 (1842).

§ 20-503. Issuance and content of letters.

After appointment, letters shall be issued to the personal representative by the Register. Letters shall contain:

(a) the name and address of the Court;

(b) the name of the decedent and the personal representative;

(c) the date of appointment of the personal representative;

(d) the date the will, if any, was admitted to probate;

(e) the signature of the Register and the seal of the Court;

(f) the date the letters were issued; and

(g) whether the administration is supervised or unsupervised and, if supervised, any limitations on the powers of the personal representative.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(w), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-503.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-501.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-501.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-501.

§ 20-504. Form of letters.

Letters of administration shall be in substantially the following form:

LETTERS OF ADMINISTRATION

To all persons who may be interested in the estate of _____, deceased:

Administration of the estate of the deceased has been granted on _____ to _____ (and the will of the deceased was probated on _____). This administration (is) (is not) (strike the inapplicable language) subject to continuing supervision of the Court. The powers of the personal representative (are not limited) (are limited as follows: _____). The appointment is in full force and effect as of this date.

(SEAL)
Witness:
Dated:
Register of Wills.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(x), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-504.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-501.
Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-501.
Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-501.

§ 20-505. Time of accrual of duties and powers.

The duties and powers of a personal representative commence upon the issuance of the letters. Good faith acts beneficial to the estate which in fact were committed by the personal representative prior to issuance of letters shall have the same effect as acts occurring after the issuance of letters. A personal representative may ratify acts done on behalf of the estate by others if the personal representative is authorized to perform such acts.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(y), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-505.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-501.
Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-501.
Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-501.

Subchapter II. Several Personal Representatives.

§ 20-511. Powers and duties of successor personal representative.

A successor personal representative shall have the same powers and duties as the original personal representative including the powers granted in the will but excluding any power that the will expressly made personal to the personal representative named in the will.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-511.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-501.

CASE NOTES

In general.

Where husband of deceased wife and a daughter of deceased wife by former marriage were appointed as coadministrators of estate of deceased wife, and controversy arose as to whether certain realty standing name of deceased wife and sum of money deposited in husband's name were in fact property of husband, and daughter filed a motion under statute of District of Columbia as administrator for

removal of husband as coadministrator, husband's removal was authorized by statute, on ground that daughter's complaint was "well founded." D.C. Code 1951, § 20-107. Goldsborough v. Marshall, 243 F.2d 240, 1957 U.S. App. LEXIS 2920 (C.A.D.C. 1957).

§ 20-512. Copersonal representatives; when joint action required; liability.

(a) When two or more persons are appointed copersonal representatives, the concurrence of all is required on all acts connected with the administration and distribution of the estate; except, for: (1) giving receipts for or receiving property due the estate; (2) in emergency situations, when all personal representatives cannot reasonably be consulted in the time available; (3) when a personal representative has validly delegated power to act to a copersonal representative; and (4) when the will or a statute provides otherwise.

(b) Persons dealing with a copersonal representative without knowledge that such representative is not the sole personal representative shall be as fully protected as if the person with whom they dealt had been the sole personal representative.

(c) If a personal representative delegates power to act to a copersonal representative, such delegation shall not reduce such representative's fiduciary responsibility.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-512.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-501.

CASE NOTES

In general.

Statute of District of Columbia providing that if any joint executor, administrator, or collector shall apprehend that he is likely to suffer by negligence or misconduct in administration or improper use or misapplication of assets of estate by any coexecutor, coadministrator, or cocollector, he may make complaint to court, and if complaint shall be adjudged "well founded," court shall have authority, in its discretion, to revoke powers and authority of executor, administrator, or collector, does not necessarily require that complaint be adjudged "well founded" in sense that there be a final determination on merits of question of ownership of controverted property, before removal can be had. D.C. Code 1951, § 20-107. Goldsborough v. Marshall, 243 F.2d 240, 1957 U.S. App. LEXIS 2920 (C.A.D.C. 1957).

Where husband of deceased wife and one of deceased wife's daughters were appointed as coadministrators of estate of wife, and daughter filed motion for removal of husband as coadministrator, because of controversy as to whether realty standing in deceased wife's name and sum of money deposited in husband's name were in fact property of husband, and federal District Court entered first order removing husband and appointing a neutral party as administrator, and husband then appealed from first order, District Court had jurisdiction to enter second order appointing another neutral party as administrator, when first neutral party declined appointment. D.C. Code 1951, § 20-107. Goldsborough v. Marshall, 243 F.2d 240, 1957 U.S. App. LEXIS 2920 (C.A.D.C. 1957).

Where husband of deceased wife and one of deceased wife's daughters were appointed as coadministrators of estate of wife, and daughter filed motion for removal of husband as coadministrator, and federal District Court entered first order removing husband and appointing neutral party as administrator, and husband then appealed from first order, District Court did not abuse its discretion in entering second order appointing another neutral party as administrator when first neutral party declined appointment. D.C. Code 1951, § 20-107. Goldsborough v. Marshall, 243 F.2d 240, 1957 U.S. App. LEXIS 2920 (C.A.D.C. 1957).

Where husband of deceased wife and one of the deceased wife's daughters were appointed as coadministrators of estate of wife, and

daughter filed a motion for removal of husband as coadministrator, and federal District Court entered first order removing husband and appointing a neutral party as administrator, and husband then appealed from first order, and District Court entered a second order appointing second neutral party as administrator, when first neutral party declined appointment, and husband also appealed from second order, appeal from first order would be dismissed as moot insofar as it dealt with appointment of a new administrator. D.C. Code 1951, § 20-107. Goldsborough v. Marshall, 243 F.2d 240, 1957 U.S. App. LEXIS 2920 (C.A.D.C. 1957).

§ 20-513. Powers of surviving copersonal representative.

Unless the will otherwise provides: (a) when the appointment of a copersonal representative is terminated, the remaining copersonal representative or representatives may exercise all powers previously exercised by the copersonal representatives; and (b) when one of two or more persons nominated by the will as copersonal representatives is not appointed by the Court, those appointed may exercise all the powers of the office.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Cross references. — Estate administration, accountings required, see § 20-724.

Prior Codifications. — 1981 Ed., § 20-513.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-501.

Subchapter III. Suspension and Termination of Powers.

§ 20-521. Restraining acts of personal representatives.

(a) On the petition of any interested person, the Court by temporary order and for good cause shown may restrain a supervised personal representative from performing specified acts of administration, disbursement, or distribution, or exercising any powers or discharging any duties of such office, or make any other order to secure proper performance of the supervised personal representative's duty, if it appears to the Court that the supervised personal representative otherwise may take some action which would unreasonably jeopardize the interest of the petitioner. Persons with whom the supervised personal representative may transact business may be made parties.

(b) The matter shall be set for hearing within 10 days unless the parties otherwise agree. Notice as the Court directs shall be given to the supervised personal representative and his attorney of record, if any, and to any other parties named defendant in the petition.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(aa), 42 DCR 63.)

Cross references. — Estate administration, accountings required, see § 20-724.

Prior Codifications. — 1981 Ed., § 20-521.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-501.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-501.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-501.

CASE NOTES

ANALYSIS

Discretion of court.
In general.

Discretion of court.

Trial court did not abuse its discretion by denying petition filed by sister of personal representative of decedent's estate seeking to enjoin personal representative from proceeding with the sale of a parcel of real estate owned by the estate; estate had a total value of approximately $245,000, decedent's three daughters were each entitled to one-third shares worth approximately $81,600, estate lacked sufficient cash to pay such shares unless the property was sold, personal representative desired to forego the animosity involved in co-ownership of the property among her siblings, and sale of the property was authorized by the general statutory grant of powers to personal representatives. Karim v. Gurley (In re Estate of Bates), 948 A.2d 518, 2008 D.C. App. LEXIS 245 (2008).

In general.

Where executor has made improper payment of claims but has not disposed of salable property unauthorizedly, court's only direct sanction is to order executor to correct or protect against his impropriety, and if executor fails to comply, then to remove him. D.C. Code 1961, §§ 11-501, 11-513, 11-514, 18-512, 18-602, 20-107, 20-108, 20-118, 20-302, 20-504, 20-603, 22-1210; U.S.Dist.Ct. Rules D.C., rule 46(b). Henry v. Grimes, 334 F.2d 550, 1964 U.S. App. LEXIS 5768 (C.A.D.C. 1964).

After probate of a will and until its revocation, executor is required to act in accordance with terms of will, and, in absence of wrongdoing on his part, is fully protected in so doing. D.C. Code 1940, § 20-106. Cashell v. Eslin, 55 F.Supp. 747, 1944 U.S. Dist. LEXIS 2287 (D.D.C1944).

§ 20-522. Termination; general.

The appointment of a personal representative shall be terminated in accordance with Chapter 13 of this title (Closing the Estate) or by the personal representative's death, disability, resignation, or removal as provided in sections 20-524 through 20-527.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-522.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-501.

CASE NOTES

In general.

Where an appeal was taken from a judgment vacating the judgment admitting the will to probate, the executor named in the will and duly appointed will continue to have executorial power until the estate is fully administered, or in the event of the invalidity of the will being finally sustained, until the estate has been turned over to his successor and he has been released by the court. Brosnan v. Fox, 284 F. 923, 1922 U.S. App. LEXIS 2484 (1922).

An executor continues to be such as long as he has anything under the will to execute, although the period of administration may be past; the principal difference between an executor during the period of administration and an executor after the lapse of that period being that the former is responsible to the probate court, and the latter to a court of equity. At both times he is equally a trustee and equally an executor. Marfield v. McMurdy, 25 App.D.C. 342, 1905 U.S. App. LEXIS 5285 (1905).

§ 20-523. Termination; effect.

(a) *Powers and duties.* — Termination ends the rights and powers of the personal representative as conferred by will or by this title. Except as provided in section 20-524, a personal representative whose appointment has been terminated shall: (1) unless otherwise ordered by the Court, perform acts necessary to protect property belonging to the estate; and (2) deliver such

property to the special administrator or the successor personal representative, if any.

(b) *Liability.* — Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination or reduce the personal representative's duty to protect property subject to such representative's control, to account for such property and to deliver such property to the special administrator or successor representative. Termination does not affect the personal jurisdiction consented to pursuant to section 20-501 in proceedings which may be commenced against such representative arising out of the performance of duties as personal representative. If the personal representative fails to account for and deliver the property belonging to the estate to the successor personal representative or special administrator, as required by subsection (a), the Court may enter judgment against the personal representative and the personal representative's surety.

(c) *Acts prior to termination.* — All lawful acts of a personal representative prior to the termination of appointment shall remain valid and effective.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-523.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-501.

CASE NOTES

ANALYSIS

Actions on bond.
Mismanagement of material facts.
Records.

Actions on bond.

Surety for former personal representative was interested party in action for accounting, and, therefore, surety waived statute of limitations defense to claim against bond by failing to object to auditor-master's report assessing liability, or otherwise raise issue before probate court. D.C. Code 1981, §§ 12-301(6), 20-523(b); Civil Rule 65.1. In re Estate of Spinner, 717 A.2d 362, 1998 D.C. App. LEXIS 179 (1998).

Mismanagement of material facts.

Personal representative of unsupervised estate did not misrepresent material facts, which would have otherwise required her removal, by failing to list decedent's bank accounts in her petition to become personal representative, as the personal representative was either the sole beneficiary or joint holder of such accounts, the accounts did not belong to the decedent at the time of her death and instead were nontestamentary accounts that personal representative was not required to include as part of the estate's assets, and irrespective of whether the contested accounts were estate assets personal representative transferred the funds in the accounts to the estate by the time she filed the verified inventory. Karim v. Gurley (In re Estate of Bates), 948 A.2d 518, 2008 D.C. App. LEXIS 245 (2008).

Records.

Alleged theft of first successor personal representative's file containing the financial records of the estate was not a mitigating factor, when probate court awarded second successor personal representative attorney fees and costs incurred when second successor personal representative reconstructed the financial records of the estate, as after the alleged theft first successor personal representative could and should have attempted to reconstruct the records of the estate in the same way that second successor personal representative eventually did. Estate of Green v. Loewinger, 912 A.2d 1198, 2006 D.C. App. LEXIS 647 (2006).

§ 20-524. Termination; death or disability.

The appointment of a personal representative shall be terminated by his death or by a judicial determination of his disability. Upon the death or a judicial determination of disability of a personal representative, any interested

person (including a person indicated in the decedent's will as the successor personal representative to the personal representative who is deceased or has been determined to have a disability) may apply to the court for the appointment of a special administrator or successor personal representative. Unless there is a surviving copersonal representative, the personal representative of a deceased personal representative or the person appointed to protect the estate of a personal representative under legal disability shall: (a) have the duty to protect property belonging to the estate that was being administered by the personal representative who is deceased or has been determined to have a disability; (b) have the power to perform acts necessary for the protection of property of such estate; (c) immediately apply to the Court for the appointment of a special administrator or successor personal representative to carry on the administration of the estate which was being administered by the personal representative who is deceased or has been determined to have a disability; and (d) immediately account for and deliver the property of such estate to a successor personal representative or special administrator. If the personal representative of a deceased personal representative or the person appointed to protect the estate of a personal representative under legal disability fails to account to and deliver the property belonging to the estate as required by this section, the Court may enter judgment against the estate of the personal representative who is deceased or has been determined to have a disability and the surety of the personal representative who is deceased or has been determined to have a disability.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Apr. 24, 2007, D.C. Law 16-305, § 34(b), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 20-524.

Effect of amendments. — D.C. Law 16-305 substituted "personal representative who is deceased or has been determined to have a disability" for "deceased or disabled personal representative" and "deceased or the disabled personal representative" and substituted "surety of the personal representative who is deceased or has been determined to have a disability" for "deceased or disabled personal representative's surety".

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-501.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 20-108.

§ 20-525. Termination; resignation.

A personal representative may resign by filing a written statement of resignation with the Register after giving at least 15 days written notice to all interested persons of intention to resign. If, within such 15 days, no one applies for the appointment of a successor personal representative or special administrator and no appointment is made, the resigning personal representative may apply to the Court for the appointment of a successor. Upon the appointment of such successor, the resigning personal representative shall immediately account for and deliver the property belonging to the estate to the successor personal representative or special administrator. The resignation of a personal representative shall be effective upon approval by the Court.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-525.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-501.

§ 20-526. Termination; removal.

(a) *Cause for removal.* — A personal representative shall be removed from office upon a finding by the Court that such representative: (1) misrepresented material facts in the proceedings leading to the appointment; (2) willfully disregarded an order of the Court; (3) is unable, for any reason, to discharge the duties and powers effectively; (4) has mismanaged property; or (5) has failed, without reasonable excuse, to perform any material duty of such office; provided, that the Court may continue the personal representative in office following a finding in accordance with paragraph (5) if the Court finds that such continuance would be in the best interests of the estate and would not adversely affect the rights of interested persons or creditors.

(b) *Hearing.* — The Court shall conduct a hearing prior to the removal of a personal representative. Such hearing may be held on the Court's own motion, on motion of the Register, or on the written petition of any interested person. The Register shall give notice of such hearing to all interested persons and the Court shall conduct the hearing within a reasonable time thereafter. Upon receipt of such notice, the personal representative may exercise only the powers of a special administrator, as provided in by section 20-533.

(c) *Appointment of successor.* — At the time of removal of a personal representative, the Court shall appoint a successor personal representative or a special administrator.

(d) *Duty of removed personal representative.* — A personal representative who has been removed from office shall immediately account for and deliver the property belonging to the estate to the successor personal representative or special administrator.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-526.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-501.

CASE NOTES

ANALYSIS

Accounting and appraisal.
Criminal convictions.
Improper payments.
In general.
Mismanagement of estate property.
Misrepresentation of material facts.
Powers and duties of successor.
Review.
Tardiness in filing taxes.

Accounting and appraisal.

Evidence was sufficient to establish that personal representative of decedent's estate did not fail to discharge her duties effectively, which would have otherwise required her removal, by failing to account for the value of and appraise property that was once owned by decedent's father; decedent's father had also died, title to the property had vested in the personal representative of decedent's father's estate and did not pass directly to his heirs, and personal representative of decedent's estate testified that she did not include property in her filings because decedent's father's estate had not completed probate and it was unclear how much of an interest in the property decedent's estate would be entitled to. Karim v. Gurley (In re Estate of Bates), 948 A.2d 518, 2008 D.C. App. LEXIS 245 (2008).

Criminal convictions.

In proceeding on petition for removal of ad-

ministrator on ground that he had been convicted of an infamous crime, order refusing removal must be vacated and set aside in order that there could be an express judicial finding made as to whether administrator had been convicted as alleged, and order entered for his removal if finding was against him on that issue. D.C. Code 1951, §§ 20-101, 20-216. Dial v. Johnson, 259 F.2d 189, 1958 U.S. App. LEXIS 4720 (C.A.D.C. 1958).

Improper payments.

Statute providing that letters of executor or administrator may be revoked if he shall sell, pledge or dispose of any property without previous order applies only to unauthorized disposal of salable property and not to improper payment of claims. D.C. Code 1961, §§ 18-602, 20-118, 20-302, 20-603, 22-1210; U.S.Dist.Ct.Rules D.C., rule 46(b). Henry v. Grimes, 334 F.2d 550, 1964 U.S. App. LEXIS 5768 (C.A.D.C. 1964).

Probate Court was not authorized to remove executor on ground that executor on his own initiative paid himself sum from assets of estate on account of his commission as executor and as fees for his services as attorney-in-fact for decedent before her death. D.C. Code 1961, §§ 18-602, 20-118, 20-302, 20-603, 22-1210; U.S.Dist.Ct.Rules D.C., rule 46(b). Henry v. Grimes, 334 F.2d 550, 1964 U.S. App. LEXIS 5768 (C.A.D.C. 1964).

Where executor has made improper payment of claims but has not disposed of salable property unauthorizedly, court's only direct sanction is to order executor to correct or protect against his impropriety, and if executor fails to comply, then to remove him. D.C. Code 1961, §§ 11-501, 11-513, 11-514, 18-512, 18-602, 20-107, 20-108, 20-118, 20-302, 20-504, 20-603, 22-1210; U.S.Dist.Ct. Rules D.C., rule 46(b). Henry v. Grimes, 334 F.2d 550, 1964 U.S. App. LEXIS 5768 (C.A.D.C. 1964).

Personal representative's extremely late payment of probate estate's taxes, which cost the estate substantial tax penalties, warranted removal of personal representative for failure to perform material duties of office. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

In general.

The fact that administratrix asserted a stale claim against deceased's estate did not authorize removal of administratrix. D.C. Code 1940, §§ 11-504, 11-512, 18-515, 20-103, 20-201, 20-216. Perkins v. Berger, 145 F.2d 856, 1944 U.S. App. LEXIS 2686 (1944).

Personal representative that takes property from pour-over trust, pursuant to trust document that provides for final accounting to personal representative, occupies position analogous to successor trustee, and is obligated to pursue any claim for breach of trust committed by predecessor of which it has knowledge, on behalf of probate estate. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Mismanagement of estate property.

Evidence was sufficient to establish that personal representative did not mismanage estate property, which would have otherwise required her removal, by failing to include in inventory or accounting two envelopes, one of which contained cash, that were retrieved from decedent's safe deposit box, or by failing to amend decedent's tax return to include receipts for medical expenses; personal representative testified she was advised by counsel that safe deposit box was a joint account that did not have to be included in inventory or accounting, personal representative nonetheless intended to give the envelopes to her younger sister in accordance with decedent's wishes, third sister seeking removal also testified decedent intended younger sister to have envelopes, and personal representative testified that she could not amend tax return, which was timely filed, because sister seeking removal retained possession of medical receipts. Karim v. Gurley (In re Estate of Bates), 948 A.2d 518, 2008 D.C. App. LEXIS 245 (2008).

Misrepresentation of material facts.

Personal representative of unsupervised estate did not misrepresent material facts, which would have otherwise required her removal, by failing to list decedent's bank accounts in her petition to become personal representative, as the personal representative was either the sole beneficiary or joint holder of such accounts, the accounts did not belong to the decedent at the time of her death and instead were nontestamentary accounts that personal representative was not required to include as part of the estate's assets, and irrespective of whether the contested accounts were estate assets personal representative transferred the funds in the accounts to the estate by the time she filed the verified inventory. Karim v. Gurley (In re Estate of Bates), 948 A.2d 518, 2008 D.C. App. LEXIS 245 (2008).

Powers and duties of successor.

Successor trustee has duty to proceed against predecessor for any breach of trust committed by predecessor of which successor has knowledge. Restatement (Second) of Trusts § 223. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Review.

Because a trial court has no discretion, but is statutorily bound to remove a personal repre-

sentative of an estate if it finds that she has committed one of the enumerated statutory infractions, on an appeal of a decision on a petition to remove a personal representative the Court of Appeals reviews only the determination of whether an infraction has been committed. Karim v. Gurley (In re Estate of Bates), 948 A.2d 518, 2008 D.C. App. LEXIS 245 (2008).

Order removing personal representative of estate and appointing successor personal representative was final order that was immediately appealable, though residuary beneficiaries subsequently filed motion to amend the order, where the motion requested only explanations of why there was good cause for removing personal representative and why personal representative's wife had not been appointed as his successor. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Because the probate court had no discretion, but was statutorily bound to remove the personal representative if it found he had committed an infraction of a personal representative's fiduciary duties, the appellate court would review only the finding of an infraction. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Personal representative of probate estate, after his removal from office, lacked standing to appeal probate court's appointment of successor personal representative; personal representative sustained no injury to his legal rights or to any legally protected relationship from appointment of successor personal representative. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Tardiness in filing taxes.

Generally, a personal representative's extreme tardiness in filing taxes for an estate, which results in substantial federal penalties and interest levied upon the estate, is a ground for removal. Karim v. Gurley (In re Estate of Bates), 948 A.2d 518, 2008 D.C. App. LEXIS 245 (2008).

§ 20-527. Termination; change in proceeding.

Upon a timely request for standard probate, a personal representative previously appointed shall have only the powers and duties of a special administrator until the appointment of a personal representative in the standard probate proceeding, subject to any order in the standard probate proceeding. Nothing in this section shall be construed to prohibit the reappointment of a person who was previously appointed in an abbreviated probate proceeding or a small estates proceeding.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-527.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-501.

Subchapter IV. Special Administrator.

§ 20-531. Appointment; qualifications.

(a) *Appointment.* — Upon the filing of a petition by an interested party, a creditor, or the Register, or upon the motion of the Court, the Court may appoint a special administrator: (1) when the appointment is necessary to protect property prior to the appointment and qualification of a personal representative; or (2) upon the termination of appointment of a personal representative and prior to the appointment of a successor personal representative.

(b) *Qualifications.* — The Court may appoint any suitable person as a

special administrator. In making such appointment, the Court shall give special consideration to any person who is likely to be appointed as the personal representative in accordance with section 20-303 and who is immediately available for appointment.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-531.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-501.

§ 20-532. Bond.

A special administrator shall satisfy the requirements of section 20-502 relating to the bond of a personal representative.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-532.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-501.

§ 20-533. Powers and duties.

A special administrator shall have the duty and all powers necessary to collect, manage, and preserve the property, in addition to any other duties and powers authorized by the Court. Upon the appointment of a personal representative, the special administrator shall account for the property of the decedent.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-533.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-501.

§ 20-534. Termination of appointment.

The appointment of a special administrator terminates either upon the appointment of a personal representative or in the same manner provided in subchapter III of this chapter for the suspension and termination of a personal representative.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-534.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-501.

CHAPTER 7. ADMINISTRATION OF THE ESTATE.

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Subchapter I. Duties of Personal Representative; Notice of Appointment to Heirs, Legatees, and Creditors.

§ 20-701. Status and duties of personal representative.

(a) A personal representative, whether supervised or unsupervised, is a fiduciary who, in addition to the specific duties expressed in this title, is under a general duty to settle and distribute the estate of the decedent in accordance with the terms of the will or laws relating to intestacy and this title, as expeditiously and efficiently as is prudent and consistent with the best interests of the persons interested in the estate. Such representative shall use the authority conferred by this title, by the terms of the will, if any, by any order in proceedings to which such representative is a party, and by the

equitable principles generally applicable to fiduciaries, fairly considering the interests of all interested persons and creditors whose claims have been allowed.

(b) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration and to special duties applicable in cases of supervised administration, a will probated in abbreviated or standard probate proceedings is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in abbreviated or standard probate proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending probate proceeding, a proceeding to vacate an order entered in an earlier probate proceeding, a proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants of an allowed claim, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this title.

(c) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in the District of Columbia at his death has the same standing to sue and be sued in the courts of this and any other jurisdiction as the decedent had immediately prior to death.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(cc), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-701.

Legislative history of Law 3-72. — Law 3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

CASE NOTES

ANALYSIS

Allowance of claims against estate.
Breaches of duty generally.
Collection and management of estate.
Failure to make payment or distribution.
Fees and costs.
Rights of action against executors or administrators.
Testamentary provisions.
Trusts.

Allowance of claims against estate.

Personal representative had no right to take fees from estate before court authorization. D.C. Code 1981, § 20-751(a). Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

Breaches of duty generally.

An important aspect of a personal representative's fiduciary duty is that he must place the best interests of the estate's heirs ahead of his own interests. Estate of Green v. Loewinger, 912 A.2d 1198, 2006 D.C. App. LEXIS 647 (2006).

A personal representative owes a fiduciary duty to the estate and its beneficiaries. Estate of Green v. Loewinger, 912 A.2d 1198, 2006 D.C. App. LEXIS 647 (2006).

First successor personal representative of decedent's estate breached his fiduciary duty to

act in the best interest of estate's heirs by seeking additional fees from heirs after probate court had reduced his requested fees as a sanction for his overbilling and lack of documentation, and thus side agreement regarding his fees that personal representative entered into with some of estate's heirs was invalid, where personal representative asked for a stay of distributions from the court in order to appeal reduction of his requested fees, wrote letter to heirs without the court's knowledge telling them if they did not pay his additional fees he would not be able to make a distribution until case was decided on appeal, violated stay for those heirs who agreed to pay an additional fee, and did not make a distribution to those heirs who did not agree to pay the additional fee even after his appeal was dismissed. Estate of Green v. Loewinger, 912 A.2d 1198, 2006 D.C. App. LEXIS 647 (2006).

It is legitimate to sanction a personal representative for actions which provide no benefit, and indeed are detrimental, to the estate. In re Estate of King, 769 A.2d 771, 2001 D.C. App. LEXIS 70 (2001).

Personal representative breaches her fiduciary duty when she fails to disclose material information to the beneficiaries. D.C. Code 1981, § 20-701(a). Hines v. Burke (In re Estate of Hines), 715 A.2d 116, 1998 D.C. App. LEXIS 134 (1998).

Collection and management of estate.

Personal representative's conduct in returning proceeds from "key man" life insurance policy to husband's partner in order to pay partnership's creditors comported with obligations of the personal representative and the partner under existing law, and thus, the personal representative was not liable to a creditor of the estate for breach of the personal representative's duties, where the partnership was heavily in debt, the creditor was allegedly owed money for services provided to the partnership, and husband's partner continued the business as a sole proprietorship without liquidation of partnership affairs, and was obligated to use the insurance proceeds to pay the creditors of the business before using them to buy out his partner's interest. In re Estate of Bryant v. Bryant, 793 A.2d 487, 2002 D.C. App. LEXIS 54 (2002).

Personal representative that takes property from pour-over trust, pursuant to trust document that provides for final accounting to personal representative, occupies position analogous to successor trustee, and is obligated to pursue any claim for breach of trust committed by predecessor of which it has knowledge, on behalf of probate estate. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Personal representative of unsupervised estate did not violate the prudent person rule by failing to purchase six-month United States Treasury bills with excess funds, given relatively short period of time within which personal representative reasonably could anticipate funding trust, need to allow for emergence of unknown heirs or creditors within that time, and time needed to decide on a proper vehicle for investing funds. In re Estate of Clarence Pechacek, 135 WLR 177 (Super. Ct. 2006).

Personal representative of unsupervised estate was not required to invest estate funds within one month of his appointment in a more productive vehicle of investment to satisfy the prudent person rule. In re Estate of Clarence Pechacek, 135 WLR 177 (Super. Ct. 2006).

Prudent person rule, rather than prudent investor rule, applied to decisions of personal representative of an unsupervised estate. In re Estate of Clarence Pechacek, 135 WLR 177 (Super. Ct. 2006).

Failure to make payment or distribution.

Personal representative's failure to distribute real property to the devisee within nine months after the death of the testatrix was not necessarily unreasonable so as to preclude payment of expenses of the property after that time from the residuary estate. D.C. Code 1981, §§ 20-701(b), 20-704(a), 20-724, 20-909, 20-1102(d). Johnson v. Martin, 567 A.2d 1299, 1989 D.C. App. LEXIS 267 (1989).

Fees and costs.

First successor personal representative of decedent's estate breached his fiduciary duty to act in the best interest of estate's heirs by seeking additional fees from heirs after probate court had reduced his requested fees as a sanction for his overbilling and lack of documentation, and thus side agreement regarding his fees that personal representative entered into with some of estate's heirs was invalid, where personal representative asked for a stay of distributions from the court in order to appeal reduction of his requested fees, wrote letter to heirs without the court's knowledge telling them if they did not pay his additional fees he would not be able to make a distribution until case was decided on appeal, violated stay for those heirs who agreed to pay an additional fee, and did not make a distribution to those heirs who did not agree to pay the additional fee even after his appeal was dismissed. Estate of Green v. Loewinger, 912 A.2d 1198, 2006 D.C. App. LEXIS 647 (2006).

Rights of action against executors or administrators.

Daughter who resided in owner's house after owner's death did not have standing, as an heir to the estate, to bring suit as a third-party beneficiary to contract between estate's per-

sonal representative and contractor for property damage allegedly resulting from contractor's negligence in repairing fire damage, but would be required to proceed against the entity with whom she had a fiduciary relationship, i.e., the personal representative, in order to assert her interest as beneficiary of estate. Robinson v. Samuel C. Boyd & Son, Inc., 822 A.2d 1093, 2003 D.C. App. LEXIS 280 (2003).

Legatees under will had standing to raise objections to, and seek redress for, actions or inactions by personal representatives, as to inter vivos pour-over trust, that diminished size of property interests passing to legatees through probate estate. D.C. Code 1981, § 20-743. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Testamentary provisions.

Provision of will which granted plenary powers to personal representative and purportedly made him unaccountable to court conflicted with Probate Code and was thus invalid. D.C. Code 1981, § 20-101 et seq. Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

Clause in will relieving personal representative from personal liability for losses resulting from exercise of any discretionary power, except in case of willful default or bad faith, did not apply to representative's nondiscretionary, statutory duties to account for and preserve all receipts and to receive court approval before taking compensation from estate. D.C. Code 1981, §§ 20-721 to 20-726, 20-751. Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

Court generally enforces exculpatory or immunity clause that relieves personal representative from personal liability for losses resulting from failure to meet required standard of care, unless clause is contrary to statute or public policy, and exculpatory clause that excuses self-dealing or attempts to limit liability for breaches of duty committed in bad faith, intentionally, or with reckless indifference to interest of beneficiary, is generally considered to be against public policy. Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

Trusts.

Trustee has highest duty of loyalty to beneficiaries of trust it administers. Restatement (Second) of Trusts § 170. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Residual legatees under will, whose potential property interests in inter vivos trust flowed from trust's pour-over provision directing the payment of assets to personal representatives of settlor's estate upon settlor's death to be distributed under will, could not proceed directly against trustees for alleged misconduct, as if beneficiary of trust; rather, legatees were required to first seek relief against personal representatives of estate, with whom they had fiduciary relationship, in probate court, for failing to pursue claims of trustee misconduct. D.C. Code 1981, §§ 20-101(d)(1)(C), 20-743. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Under normal circumstances personal representatives, not legatees, would assert interests of estate against pour-over trustees. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Trust beneficiary generally cannot bring action directly against third-party wrongdoer for alleged harm to trust unless beneficiary is in possession of subject matter of trust; rather, his relief is action in equity against trustee to compel trustee to proceed against third party, although for purposes of judicial economy third party may also be joined as defendant in beneficiary's action. Restatement (Second) of Trusts § 281. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

§ 20-701.01. Personal representative to proceed without court order; exception.

(a) A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as may be otherwise specified or ordered by the Court in a particular proceeding, do so without adjudication, order, or direction of the Court, but the personal representative may invoke the jurisdiction of the Court, in proceedings authorized by this title, to resolve questions concerning the estate or its administration.

(b) Unless the time of distribution is extended by the Court for good cause shown, the supervised personal representative shall distribute all the assets of the estate in such representative's possession or control within 30 days of the approval of the final account.

(Mar. 21, 1995, D.C. Law 10-241, § 3(dd), 42 DCR 63; Apr. 9, 1997, D.C. Law 11-255, § 19(c), 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 20-701.1.

Emergency legislation. — For temporary amendment of § 4 of D.C. Law 10-241, see § 2 of the Probate Reform Act of 1994 Emergency Amendment Act of 1995 (D.C. Act 11-79, June 28, 1995, 42 DCR 3452).

Legislative history of Law 10-241. — Law 10-241, the "Probate Reform Act of 1994," was introduced in Council and assigned Bill No. 10-649, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-386 and transmitted to both Houses of Congress for its review. D.C. Law 10-241 became effective on March 21, 1995.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Editor's notes. — Application of Law 10-241:

10-241: Section 4 of D.C. Law 10-241, as amended by § 2 of D.C. Law 11-54, provided that the act shall be applicable to estates of decedents who died on or after July 1, 1995.

Section 32(c) of D.C. Law 15-354 provided that the section designation of § 20-701.1 of the District of Columbia Official Code is redesignated as § 20-701.01.

§ 20-702. Duties of personal representative; possession and control of estate.

A personal representative has a right to and shall take possession or control of the decedent's estate: except, that property in the possession of the person presumptively entitled to such property as heir or legatee shall be possessed by the personal representative only when such possession is reasonably necessary for purposes of administration. When there is a request by a personal representative for delivery of any property possessed by the heir or legatee, it shall be presumed, in any action against the heir or legatee for possession of such property, that the possession of the property by the personal representative is reasonably necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in the personal representative's possession. The personal representative may maintain an action to recover possession of any property of the estate or to determine the title to any property of the decedent's estate.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(ee), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-702.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

CASE NOTES

Analysis

Establishment and enforcement of trusts generally.
In general.
Pour-over trusts.
Recovery of assets.

Establishment and enforcement of trusts generally.

Trust beneficiary generally cannot bring action directly against third-party wrongdoer for alleged harm to trust unless beneficiary is in possession of subject matter of trust; rather, his relief is action in equity against trustee to compel trustee to proceed against third party, although for purposes of judicial economy third party may also be joined as defendant in beneficiary's action. Restatement (Second) of Trusts § 281. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

In general.

Agreement memorialized in letter from attorney representing personal representative of estate, whereby heir was assured that all proceeds from sale of decedent's home would be under joint control of attorney and personal representative in return for heir's consent to sale and waiver of requirement of additional bond, did not contractually bind attorney; assurances in letter were made by attorney in her capacity as employee of personal representative, of which heir and his counsel were presumed to have been aware, and attorney gained nothing by making herself party to contract; moreover, attorney could not be obligated to do something she had no independent power to do inasmuch as she had no authority to take joint control of assets or to make herself required signatory of account in which assets were placed. Hopkins v. Akins, 637 A.2d 424, 1993 D.C. App. LEXIS 119 (1993).

Pour-over trusts.

Pour-over trust provision terminating inter vivos trust upon settlor's death and paying assets over to personal representatives of settlor's estate to be distributed in accordance with settlor's will established new fiduciary relationship between personal representatives and legatees under will, independent of relationship between trust and settlor's personal representatives. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Personal representative that takes property from pour-over trust, pursuant to trust document that provides for final accounting to personal representative, occupies position analogous to successor trustee, and is obligated to pursue any claim for breach of trust committed by predecessor of which it has knowledge, on behalf of probate estate. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Residual legatees under will, whose potential property interests in inter vivos trust flowed from trust's pour-over provision directing the payment of assets to personal representatives of settlor's estate upon settlor's death to be distributed under will, could not proceed directly against trustees for alleged misconduct, as if beneficiary of trust; rather, legatees were required to first seek relief against personal representatives of estate, with whom they had fiduciary relationship, in probate court, for failing to pursue claims of trustee misconduct. D.C. Code 1981, §§ 20-101(d)(1)(C), 20-743. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Recovery of assets.

Second successor personal representative of decedent's estate had standing to object to the side agreement on fees that first successor personal representative entered into with some of the heirs of decedent's estate, though the heirs that entered into the side agreement did not object or complain, as second successor personal representative only learned about the side agreement when he discovered a substantial discrepancy between the amount of assets shown in probate division's account and the assets that first successor personal representative turned over to him, missing assets and the side agreement with some of the heirs were plainly matters that related to the administration of the estate, and second successor personal representative had a duty to take control of decedent's estate and maintain any action necessary to recover possession of estate property. Estate of Green v. Loewinger, 912 A.2d 1198, 2006 D.C. App. LEXIS 647 (2006).

§ 20-703. Preferences; sale of estate property.

Any interested person may move the Court to have a priority placed on the sale or transfer of any property of the estate, both real and personal, prior to the sale or transfer of that property. Upon the filing of such a motion, no sale or transfer of such estate property shall be undertaken by the personal representative until (1) all interested persons have been given notice by the

personal representative of the motion; and (2) the Court, after a hearing, has determined the order in which certain property in the estate shall be sold or transferred.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-703.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

§ 20-704. Notice of appointment to interested persons, creditors and unknown heirs.

(a) Within 20 days after appointment, the personal representative shall, unless notice has already been given under this subsection, publish a notice of the appointment in a newspaper of general circulation of the District of Columbia and any other publication the Court may order or provide by Rule once a week for 3 successive weeks. This notice shall announce the appointment and address of the personal representative, state whether administration is supervised or unsupervised, and notify creditors of the estate to present their claims. The personal representative shall file with the Register a certification specifying the date and content of the published notice. The notice shall be substantially in the following form:

To all persons interested in the estate of _____

This is to give notice that the undersigned, _____ whose address is _____ was, on _____ appointed personal representative of the estate of _____ who died on _____, (with) (without) a will, and that the personal representative will serve in (supervised) (unsupervised) administration.

All persons having any objection to such appointment (or to the probate of the decedent's will) shall file an objection with the Register of Wills on or before _____ (6 months from the date of the first publication of notice under this section).

All persons having claims against the decedent shall present their claims to the undersigned or file their claims with the Register of Wills on or before 6 months from the date of the first publication of this notice.

Any claim not so filed on or before such date shall be unenforceable thereafter.

Any person who is related to the decedent and who does not receive notice of this appointment by mail within 25 days shall so inform the Register of Wills including such person's name, address, and relationship to the decedent.

_____
Personal representative

Date of first publication: _____

(b) Not later than 20 days after appointment, a personal representative (except when notice under this subsection has already been given) shall send, by registered or certified mail to the heirs and legatees of the decedent and to

all creditors whose identities are known or whose identities are reasonably ascertainable by reasonably diligent efforts, the text of the first newspaper notice of the appointment of such representative, and the following general information in a form developed by the Court:

(1) the typical duties of a personal representative in estate administration, including a description of the essential steps of estate administration, whether the personal representative is subject to continuing court supervision as provided in section 20-401 et seq., or is an unsupervised personal representative;

(2) how fees for estate administration are determined in this jurisdiction and that the personal representative is to be provided as soon as feasible with an estimate of fees to be claimed against the estate;

(3) the rights of heirs or legatees, the assistance an heir or legatee may provide to the personal representative, and the role of the Register, whether the personal representative is subject to continuing court supervision as provided in section 20-401 et seq., or is an unsupervised personal representative. The personal representative shall certify to the Register that notices under this subsection have been given, whether the personal representative is subject to continuing court supervision as provided in section 20-401 et seq., or is an unsupervised personal representative; and

(4) if the personal representative is not subject to continuing court supervision, the right of any interested person, on petition to the Court duly presented and filed with the Register, to initiate a proceeding involving notice to interested persons and a hearing to impose Court supervision on the estate, or to seek any other court order necessary for protection of rights of the interested person.

(b-1) The personal representative shall certify to the Register that notices under subsection (b) of this section have been given.

(b-2) Within 90 days after the appointment of the personal representative, the personal representative (whether supervised or unsupervised) shall certify to the Register that the notices required under subsection (b) of this section above have been given.

(c) If a will is admitted to probate after notice has been given under subsections (a) and (b) of this section, the personal representative shall give notice of appointment or reappointment as provided in subsections (a) and (b) of this section: except, that ordinary mail may be substituted for registered or certified mail in accordance with section 20-103.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(ff), 42 DCR 63; Apr. 18, 1996, D.C. Law 11-110, § 67, 43 DCR 530; Apr. 9, 1997, D.C. Law 11-255, § 19(d), 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 20-704.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was

assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 16-707.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

CASE NOTES

ANALYSIS

Notice obligations of personal representatives.
Publication expenses.
Time for filing claims.

Notice obligations of personal representatives.

Evidence that half-brother who shared the same mother as decedent and lived in the same city as half-brother who shared the same father and such half-brother's son, who was elected mayor of the city, was not clear and convincing evidence that the half brother that shared the same mother committed fraud when he served as administrator of decedent's intestate estate and only identified himself and the children of his full brother as decedent's heirs, as required in order for the children of the half-brother who shared the same father as decedent to maintain a fraud claim against administrator and to recover on administrator's surety bond, where the children of the half-brother who shared the same father were not aware of their relationship to decedent until 16 years after decedent's death, and there was no evidence that administrator's attorney, who conducted a nationwide search for decedent's heirs, colluded in any alleged fraud by administrator. Estate of Nethken v. Peerless Ins. Co., 978 A.2d 603, 2009 D.C. App. LEXIS 356 (2009).

Whether a personal representative has complied with due process notice obligations is a mixed question of fact and law. In re Estate of Bryant v. Bryant, 793 A.2d 487, 2002 D.C. App. LEXIS 54 (2002).

The burden that due process imposes on the personal representative of an estate to provide notice to creditors is not an onerous one, for all that the executor or executrix need do is make reasonably diligent efforts to uncover the identities of creditors; impracticable and extended searches are not required. In re Estate of Bryant v. Bryant, 793 A.2d 487, 2002 D.C. App. LEXIS 54 (2002).

Publication notice is sufficient for estate creditors who are not reasonably ascertainable or whose claims are merely "conjectural." In re Estate of Bryant v. Bryant, 793 A.2d 487, 2002 D.C. App. LEXIS 54 (2002).

Claim for unpaid services against the estate of a partner of an architectural firm was not barred for failure to be presented within six months after the personal representative published notice of her appointment, where the claim was asserted by a creditor of the estate and, thus, it was not merely conjectural, and despite personal representative's knowledge that the partnership was "heavily in debt" to creditors, she failed to make a reasonably diligent effort to inquire as to their identity in order to provide actual notice of the probate proceedings, absent showing that such inquiry was impracticable, burdensome or futile; personal representative could have inquired of the remaining partner or sought access to the financial records of the business. In re Estate of Bryant v. Bryant, 793 A.2d 487, 2002 D.C. App. LEXIS 54 (2002).

Publication expenses.

Court's refusal to waive costs of publishing notice of appointment as personal representative of estate was an interlocutory matter which was not appealable where personal representative had already completed publication notices to creditors and unknown heirs in two local newspapers, had posted the requisite bond, and had filed wrongful death and survival actions. In re Guardianship of J.L.N., 557 A.2d 1313, 1989 D.C. App. LEXIS 78 (1989).

Time for filing claims.

Landlord who filed claim against his former tenant's estate for unpaid rent and damages in the amount of $24,528 was an "interested person" who was entitled to mandatory standard probate, though abbreviated probate proceedings were initiated, where landlord filed his claim within six months of the published notice of appointment. D.C. Code 1981, §§ 20-311, 20-321, 20-322, 20-704, 20-903(a)(1), 20-905. In re Estate of Wilson, 743 A.2d 719, 2000 D.C. App. LEXIS 26 (2000).

§ 20-705. Filing revised and corrected documents.

If a personal representative discovers that any document previously filed or given to interested persons by such representative or by any predecessor personal representative is incomplete or erroneous in any material respect,

such representative shall promptly file with the Register or give to the interested persons a revised and corrected document, stating the correct information, if known; provided, however, that statements contained in the petition for probate need not be revised or corrected if the incomplete or erroneous information will be reflected accurately in inventories or accounts later filed with the Register or given to the interested persons.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(gg), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-705.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

Subchapter II. Inventory and Appraisal.

§ 20-711. Inventory; general.

(a) Subject to the provisions of section 20-715, a personal representative shall, within 3 months of appointment, prepare a verified inventory of property owned by the decedent at the time of his death. The inventory shall list each item of property, describe each item of property in reasonable detail, indicate the fair market value of each item of property on the date of the decedent's death, and indicate the type and amount of the encumbrances if any, for each item of property. The personal representative shall include the following items in the inventory of property:

(1) real property;

(2) tangible personal property, excluding (A) wearing apparel, other than furs and jewelry, and (B) food for consumption by the family, and (C) family pictures, and (D) family Bibles;

(3) corporate stocks;

(4) debts owed to the decedent, including bonds and notes;

(5) bank accounts, building association shares, savings and loan association accounts, and money;

(6) debts owed to the decedent by the personal representative; and

(7) any other interest in property, tangible or intangible, that passes by the terms of a valid will or the law of intestate succession.

(b) If the administration is supervised as provided in section 20-401 et seq., and except as provided in section 20-731, the personal representative shall file with the Court the verified inventory with a certificate that there has been mailed or delivered to all interested persons, within the previous 15 days, a copy of the inventory with a notice that the inventory will be filed on or before a stated date. If the administration is not supervised, section 20-713.01 controls.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(hh), 42 DCR 63; Mar. 24, 1998, D.C. Law 12-81, § 13(b), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 20-711.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

CASE NOTES

Trusts.

Trustee is under duty to beneficiary to keep clear and accurate accounts with respect to administration of trust, to give beneficiary, upon his request at reasonable times, complete and accurate information as to nature and amount of trust property, and to permit beneficiary or person duly authorized by beneficiary to inspect subject matter of trust, accounts and vouchers, and other documents relating to trust, and this duty extends not only to present beneficiaries but to all persons having present or future interest in trust or its assets. Restatement (Second) of Trusts §§ 172, 173. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

§ 20-712. Appraisal; supervised administration.

(a) In a supervised administration, the fair market value of each item listed in the inventory, as of the date of death of the decedent, shall be determined by an appraisal. Except as specifically provided by this subsection, the supervised personal representative may use either the standing appraisers or special appraisers, as the personal representative deems appropriate. The supervised personal representative may appraise the following items listed in section 20-711(a):

(1) items listed in paragraphs (4), (5), and (6); and

(2) items listed in paragraph (3) that are listed on any national or regional exchange or are sold in the over-the-counter market for which bid and asked prices are regularly published.

(b) An appraisal shall be in columnar form, shall describe generally each item that has been appraised, shall assign a value to each item that has been appraised, and shall be verified by the appraiser. A verification under this section shall certify that the appraiser has impartially valued the property described in the appraisal to the best of the appraiser's skill and judgment. Any appraisal not performed by the personal representative shall be delivered to the personal representative immediately upon completion and verification. The name and address of any appraiser shall be indicated on the inventory with the item or items appraised.

(c) An appraisal fee shall be payable only to a person making an appraisal at the request of the personal representative.

(d) If the filing of the inventory was not required within 3 months after the appointment of the personal representative, either because the administration was at that time unsupervised or because it was waived pursuant to section 20-731, and if the inventory is subsequently required to be filed, the requirement for appraisals in that event shall be excused unless otherwise ordered by the Court for good cause shown.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(ii), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-712.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

§ 20-713. Supervised administration; supplemental inventory; reappraisal.

(a) Except as provided in section 20-731, the supervised personal representative shall report to the Court any property discovered after the filing of the original inventory by filing a supplemental inventory. For each item of after-discovered property, the supplemental inventory shall satisfy the requirements of section 20-711(a) and shall be certified in accordance with subsection (c) of this section.

(b) A supervised personal representative shall have any item reappraised upon discovering that the original appraisal was erroneous or misleading. The supervised personal representative shall file the reappraisal and certification required by subsection (c) with the Court.

(c) A supplemental inventory or reappraisal filed with the Court shall be accompanied by a certification by the supervised personal representative that there has been mailed or delivered to all interested persons within the previous 15 days a copy of the supplemental inventory or reappraisal.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(jj), 42 DCR 63; Apr. 9, 1997, D.C. Law 11-255, § 19(e), 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 20-713.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 16-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

§ 20-713.01. Unsupervised administration; inventory and appraisal duties of unsupervised personal representative.

(a) If the administration is unsupervised, the personal representative, if not a special administrator or a successor to another representative who has previously discharged this duty, shall, within 3 months after appointment, prepare and deliver or mail to each interested person an inventory of property owned by the decedent at the time of death, listing each item of such property with reasonable detail, and indicating as to each listed item, its fair market

value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

(b) The personal representative may also file the verified original of the inventory for record with the Court.

(c) The personal representative may use the standing appraisers or may employ any other qualified and disinterested appraiser to assist in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items appraised.

(d) If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, the personal representative shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the Court if the original inventory was filed, and mail or deliver copies thereof to the interested persons.

(Mar. 21, 1995, D.C. Law 10-241, § 3(kk), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-713.1.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

Section 32(d) of D.C. Law 15-354 provided that the section designation of § 20-713.1 of the District of Columbia Official Code is redesignated as § 20-713.01.

CASE NOTES

In general.

Superior court would not disallow breach of contract claim of decedent's former wife, on basis of an inventory indicating insufficient funds to pay claim; inventory was in no way conclusive of the amount of assets in decedent's estate, as it could be revised, and no final account had been provided. In re Estate of Howard Equitz, 134 WLR 299 (Super. Ct. 2006).

§ 20-714. Revision of inventory.

Whether the administration is or is not supervised, any interested person may, at any time before the estate is closed, petition the Court for revision of any value assigned to any item in the inventory and for inclusion or exclusion of any item erroneously omitted or listed in the inventory. After due notice and hearing, the Court may require such revision as it deems appropriate.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(ll), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-714.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

§ 20-715. Inventory of successor personal representative.

Except as provided in section 20-731, within 3 months of appointment, a supervised successor personal representative shall either file a new inventory to replace the inventory filed by a previous personal representative or file a written consent to the items as listed and valued in such previous inventory.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(mm), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-715.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

Subchapter III. Accounting.

§ 20-721. Duty to account; supervised administration.

Except as provided in section 20-731, a supervised personal representative shall prepare verified written accounts of the management and distribution of the decedent's property at the times and in the manner prescribed in this subchapter. The personal representative shall file the account with a certificate that there has been mailed or delivered to all interested persons, within the previous 15 days, a copy of the account with a notice that the account will be filed on or before a stated date.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(nn), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-721.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

CASE NOTES

Release from liability.

Clause in will relieving personal representative from personal liability for losses resulting from exercise of any discretionary power, except in case of willful default or bad faith, did not apply to representative's nondiscretionary, statutory duties to account for and preserve all receipts and to receive court approval before taking compensation from estate. D.C. Code 1981, §§ 20-721 to 20-726, 20-751. Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

Where a Virginia conservator attempts to waive the filing of an account in a District of Columbia estate on behalf of her ward, the Superior Court must apply to the Virginia court

for the waiver of the right to the accountings in the District of Columbia estate. Estate of Charuhas, 121 WLR 147 (Super. Ct. 1993).

§ 20-722. Initial account; supervised administration.

A supervised personal representative's initial account of the administration of the decedent's property shall contain:

(a) the total value of property as shown in all inventories made prior to the date of the account;

(b) all receipts of the estate made prior to the date of the account;

(c) each purchase, sale, lease, transfer, compromise, settlement, disbursement and distribution of assets of the estate, a description of each such transaction, and a statement of the amount by which it affects the amounts referred to in paragraphs (a) and (b); and

(d) the value of any remaining assets in the possession or control of the personal representative.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(oo), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-722.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

CASE NOTES

In general.

Trustee is under duty to beneficiary to keep clear and accurate accounts with respect to administration of trust, to give beneficiary, upon his request at reasonable times, complete and accurate information as to nature and amount of trust property, and to permit beneficiary or person duly authorized by beneficiary to inspect subject matter of trust, accounts and vouchers, and other documents relating to trust, and this duty extends not only to present beneficiaries but to all persons having present or future interest in trust or its assets. Restatement (Second) of Trusts §§ 172, 173. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Personal representative that takes property from pour-over trust, pursuant to trust document that provides for final accounting to personal representative, occupies position analogous to successor trustee, and is obligated to pursue any claim for breach of trust committed by predecessor of which it has knowledge, on behalf of probate estate. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Disallowance of certain amount of personal representative's expenditures as improper payments was proper where determination that personal representative did not follow rules governing expense documentation and, instead, presented cancelled checks and receipts that either had no relationship to each other or had no relationship to estate was not clearly erroneous. D.C. Code 1981, §§ 20-722(c), 20-723(c), 20-741; Probate Rule 118(a)(1). Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

§ 20-723. Subsequent account; supervised administration.

After an initial account has been rendered, subsequent accounts, whether filed by the same supervised personal representative or by a successor, shall contain:

(a) the value of any assets in the possession or control of the personal representative as shown in the previous account;

(b) the value of assets as shown in any inventory made since the previous account;

(c) all receipts of the estate since the date of the previous account;

(d) each purchase, sale, lease, transfer, compromise, settlement, disbursement and distribution of assets since the previous account, a description of each such transaction, and a statement of the amount by which it affects the amounts referred to in paragraphs (a), (b), and (c); and

(e) the value of any remaining assets in the possession or control of the personal representative.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(pp), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-723.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

CASE NOTES

Analysis

Judicial review.
Successor and quasi-successor representative.
Sufficiency of documentation.

Judicial review.

Trial court did not abuse its discretion by failing to order estate's personal representatives to disclose financial records of corporation that was wholly owned by estate before approving account of estate, despite contention that residual beneficiary needed disclosure of corporation's operations to determine whether it was necessary for estate to transfer certificate of deposit, which had been pledged to corporation, in light of possible self-dealing by other residual beneficiary who was corporation's president and director; residual beneficiary did not claim that transfer adversely affected value of residuary estate as a whole. Restatement (Second) of Trusts § 173. D.C. Code 1981,§§ 20-723, 20-724. Jones v. Hagans, 634 A.2d 1219, 1993 D.C. App. LEXIS 309 (1993).

Trial judge did not abuse his discretion by approving account of estate without conducting further review of circumstances surrounding estate's transfer to its wholly owned corporation of certificate of deposit which had been pledged to corporation; there was no evidence of fraud, malice, or bad faith, trustees were clearly acting within their discretion in transferring certificate of deposit, no money was taken out of estate residue owed to beneficiaries, and, thus, there was no evidence that transfer was unauthorized or breach of fiduciary duty. D.C. Code 1981, §§ 20-723, 20-724. Jones v. Hagans, 634 A.2d 1219, 1993 D.C. App. LEXIS 309 (1993).

Successor and quasi-successor representative.

Personal representative that takes property from pour-over trust, pursuant to trust document that provides for final accounting to personal representative, occupies position analogous to successor trustee, and is obligated to pursue any claim for breach of trust committed by predecessor of which it has knowledge, on behalf of probate estate. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Successor trustee has duty to proceed against predecessor for any breach of trust committed by predecessor of which successor has knowledge. Restatement (Second) of Trusts § 223. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Sufficiency of documentation.

Trustee is under duty to beneficiary to keep clear and accurate accounts with respect to administration of trust, to give beneficiary, upon his request at reasonable times, complete and accurate information as to nature and amount of trust property, and to permit beneficiary or person duly authorized by beneficiary to inspect subject matter of trust, accounts and vouchers, and other documents relating to trust, and this duty extends not only to present

beneficiaries but to all persons having present or future interest in trust or its assets. Restatement (Second) of Trusts §§ 172, 173. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Disallowance of certain amount of personal representative's expenditures as improper payments was proper where determination that personal representative did not follow rules governing expense documentation and, instead, presented cancelled checks and receipts that either had no relationship to each other or had no relationship to estate was not clearly erroneous. D.C. Code 1981, §§ 20-722(c), 20-723(c), 20-741; Probate Rule 118(a)(1). Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

§ 20-724. When to render accounts; supervised administration.

(a) *General.* — Except as provided in section 20-731, a supervised personal representative shall render accounts:

(1) within one year and one day of the first publication of notice pursuant to section 20-704;

(2) within 9 months after the account referred to in paragraph (1) of this subsection and within 9 months of each subsequent account until the filing of the final account or the termination of the supervised personal representative's appointment;

(3) upon termination of the supervised personal representative's appointment, as provided in subchapter III of Chapter 5; and

(4) at such other times as may be ordered by the Court.

(b) *Extensions.* — Upon written application of the supervised personal representative stating reasons for the request, the Court may, for good cause shown, extend the time for rendering an account to a specified date.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(qq), 42 DCR 63; Apr. 9, 1997, D.C. Law 11-255, § 19(f), 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 20-724.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 16-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

CASE NOTES

ANALYSIS

Judicial review.
Timely distribution.

Judicial review.

Trial court did not abuse its discretion by failing to order estate's personal representatives to disclose financial records of corporation that was wholly owned by estate before approving account of estate, despite contention that residual beneficiary needed disclosure of corporation's operations to determine whether it was necessary for estate to transfer certificate of deposit, which had been pledged to corporation, in light of possible self-dealing by other residual beneficiary who was corporation's president and director; residual beneficiary did not claim that transfer adversely affected value of residuary estate as a whole. Restatement (Second) of Trusts § 173. D.C. Code 1981,§§ 20-723, 20-724. Jones v. Hagans, 634 A.2d 1219, 1993 D.C. App. LEXIS 309 (1993).

Trial judge did not abuse his discretion by approving account of estate without conducting further review of circumstances surrounding

estate's transfer to its wholly owned corporation of certificate of deposit which had been pledged to corporation; there was no evidence of fraud, malice, or bad faith, trustees were clearly acting within their discretion in transferring certificate of deposit, no money was taken out of estate residue owed to beneficiaries, and, thus, there was no evidence that transfer was unauthorized or breach of fiduciary duty. D.C. Code 1981, §§ 20-723, 20-724. Jones v. Hagans, 634 A.2d 1219, 1993 D.C. App. LEXIS 309 (1993).

Timely distribution.

Personal representative's failure to distribute real property to the devisee within nine months after the death of the testatrix was not necessarily unreasonable so as to preclude payment of expenses of the property after that time from the residuary estate. D.C. Code 1981, §§ 20-701(b), 20-704(a), 20-724, 20-909, 20-1102(d). Johnson v. Martin, 567 A.2d 1299, 1989 D.C. App. LEXIS 267 (1989).

§ 20-725. Failure to render account.

A supervised personal representative may be removed as provided in section 20-527 upon failure to file an account or the accompanying certificate as required by section 20-721.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(rr), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-725.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

CASE NOTES

In general.

Clause in will relieving personal representative from personal liability for losses resulting from exercise of any discretionary power, except in case of willful default or bad faith, did not apply to representative's nondiscretionary, statutory duties to account for and preserve all receipts and to receive court approval before taking compensation from estate. D.C. Code 1981, §§ 20-721 to 20-726, 20-751. Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

§ 20-726. Exceptions to account; supervised administration.

Any interested person may file an exception to an account with the Register within 30 days of the filing of the account. Such person shall mail a copy of the exception to the personal representative.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3§§ , 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-726.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-707.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

CASE NOTES

In general.

Residuary legatees' exceptions to charging residuary estate with real estate taxes, insurance premiums, repair bills and utility bills for a piece of real property which was specifically devised were timely even though filed more than 30 days after personal representative filed accountings disclosing the expenses, where it was not until the real property was sold that the legatees could have known that the expenditures were to be charged to the residue and not to the specific devisee; discovery rule was applicable to prevent claims from being time barred. D.C. Code 1981, § 20-726. Johnson v. Martin, 567 A.2d 1299, 1989 D.C. App. LEXIS 267 (1989).

Subchapter IV. Waiver of Inventories and Accounts.

§ 20-731. Waiver of filing; supervised administration.

(a) A supervised personal representative shall be excused from filing with the Court the inventories required by sections 20-711 and 20-713, and the accounts required by sections 20-721, 20-722, and 20-723 if each heir or legatee signs a written waiver filed with the Register. A waiver under this section shall state that the heirs or legatees are aware of their right to require the filing of inventories and accounts and of their right to revoke the waiver under subsection (b) of this section. Unless the will specifically provides otherwise, a trustee as legatee may authorize and sign a waiver under this section.

(b) Any heir or legatee, including a trustee as legatee, who has signed a waiver under subsection (a) of this section may require the filing of inventories and accounts as provided in subchapters II and III of this chapter by filing a written demand with the Register within 7 days of sending the final account to interested persons.

(c) If the will waives the filing of inventories and accounts, the supervised personal representative shall similarly be excused from filing with the Court such inventories and accounts. In that event, the Court may order the filing of inventories or accounts only after a hearing and for good cause shown.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(tt), 42 DCR 63; Apr. 9, 1997, D.C. Law 11-255, § 19(g), 44 DCR 1271; Mar. 24, 1998, D.C. Law 12-81, § 13(c), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 20-731.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 16-701.01.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 20-711.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

CASE NOTES

In general.

In waiving an account, all heirs and legatees must waive their right to the account in order for such a waiver to be effective. Estate of Charuhas, 121 WLR 147 (Super. Ct. 1993).

Where a Virginia conservator attempts to waive the filing of an account in a District of Columbia estate on behalf of her ward, the Superior Court must apply to the Virginia court for the waiver of the right to the accountings in

the District of Columbia estate. Estate of Charuhas, 121 WLR 147 (Super. Ct. 1993).

§ 20-732. Waiver of formal Court audit; supervised administration.

(a) A supervised personal representative shall be excused from a formal Court audit of the accounts required by sections 20-721, 20-722, and 20-723 if authorized by written waiver signed by each heir or legatee and filed with the Register. A waiver under this section shall state that the heirs or legatees are aware of their right to require a formal Court audit of accounts and of their right to revoke the waiver under subsection (c) of this section. Unless the will specifically provides otherwise, a trustee as legatee may authorize and sign a waiver under this section.

(b) Upon the filing of a waiver under this section, the Court shall conduct a cursory review to determine if the accounts appear regular on their face and are supported by reasonable documentation.

(c) Any heir or legatee, including a trustee as legatee, who has signed a waiver under subsection (a) of this section, may require a formal Court audit of accounts by filing a written demand with the Register within 20 days of the approval of the final account under section 20-1301.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(uu), 42 DCR 63; Apr. 9, 1997, D.C. Law 11-255, § 19(h), 44 DCR 1271; Mar. 24, 1998, D.C. Law 12-81, § 13(d), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 20-732.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 16-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

§ 20-733. Right of heir or legatee.

Nothing shall excuse a personal representative, whether supervised or unsupervised, from the duty to mail or deliver inventories and accounts to each interested person as provided in sections 20-711, 20-713, 20-721 and 20-734.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(vv), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-733.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

CASE NOTES

In general.

Legatees under will had standing to raise objections to, and seek redress for, actions or inactions by personal representatives, as to inter vivos pour-over trust, that diminished size of property interests passing to legatees through probate estate. D.C. Code 1981, § 20-743. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Trustee is under duty to beneficiary to keep clear and accurate accounts with respect to administration of trust, to give beneficiary, upon his request at reasonable times, complete and accurate information as to nature and amount of trust property, and to permit beneficiary or person duly authorized by beneficiary to inspect subject matter of trust, accounts and vouchers, and other documents relating to trust, and this duty extends not only to present beneficiaries but to all persons having present or future interest in trust or its assets. Restatement (Second) of Trusts §§ 172, 173. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

§ 20-734. Duty to account; unsupervised administration.

An unsupervised personal representative shall account to interested persons for his receipts, disbursements, and distribution of estate assets at reasonable intervals, or on reasonable demand, and may be compelled to account to the Court in a proceeding initiated by an interested person, following notice and hearing.

(Mar. 21, 1995, D.C. Law 10-241, § 3(ww), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-734.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

CASE NOTES

In general.

Superior court would not disallow breach of contract claim of decedent's former wife, on basis of an inventory indicating insufficient funds to pay claim; inventory was in no way conclusive of the amount of assets in decedent's estate, as it could be revised, and no final account had been provided. In re Estate of Howard Equitz, 134 WLR 299 (Super. Ct. 2006).

§ 20-735. Optional proceedings, terminating unsupervised administration; testate or intestate; Certificate of Completion.

(a) Unless otherwise ordered by the Court for good cause shown in a particular matter, the personal representative in an unsupervised administration shall close the estate by filing with the Court a Certificate of Completion, which shall be verified and in a form prescribed by the Court. Such Certificate may be filed at any time, but in no event prior to the expiration of the time for filing creditors' claims against the estate.

(b) The Certificate of Completion shall include a statement that:

(1) the time for the presentation of creditors' claims has expired;

(2) all interested persons have been sent a copy of an account and a notice of each one's right to object within 60 days after such account was sent, and

that all claims of that interested person against the personal representative shall be barred unless such an objection is made;

(3) either each interested person has consented in writing to the account as stated, or there was no written objection within the 60-day period described above;

(4) distribution has been made in accordance with such account;

(5) all known claims of creditors which are not barred have been fully satisfied or otherwise settled or, if any claim remains undischarged, whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or a detailed explanation of what other arrangements have been made to accommodate all such outstanding liabilities; and

(6) the personal representative has satisfied all administration expenses and other obligations of the estate incurred or authorized by the personal representative, and has otherwise fully administered the estate.

(c) The Certificate of Completion shall also contain a list containing the name and address of each recipient of the copy of the account and the corresponding notice, as well as a certificate of service confirming that each of those individuals or entities also received a copy of the Certificate of Completion.

(d) Any interested person or other recipient of a copy of the account may object to the account by mailing or delivering to the personal representative or to the Court, within the 60-day period described above, a written statement of his or her objections to the account as stated.

(Mar. 21, 1995, D.C. Law 10-241, § 3(xx), 42 DCR 63; Apr. 9, 1997, D.C. Law 11-255, § 19(i), 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 20-735.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 16-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

§ 20-736. Finality.

In the absence of fraud, neither the personal representative nor any distributee of estate property shall be liable for any claim, liability, or damage claimed by any interested person (or any person or entity claiming by or through such interested person):

(1) who has received the notice and copy of the final account of the unsupervised personal representative, and not objected to the final account within the 60-day period described in section 20-735(b); an unsupervised personal representative may send such notice and copy of the final account to any one or more creditors of the decedent or of the estate, and any such creditor not so objecting in a timely manner shall be similarly bound; or

(2) who has not filed an exception to the final account of the supervised personal representative within the time and manner prescribed in section 20-726.

(Mar. 21, 1995, D.C. Law 10-241, § 3(yy), 42 DCR 63; Apr. 9, 1997, D.C. Law 11-255, § 19(j), 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 20-736.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 16-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

Subchapter V. Powers of Personal Representative.

§ 20-741. General powers.

Except as otherwise validly limited by the will, this title, or by an order of Court made in accordance with this title, a personal representative may, in addition to any power or authority contained in the will and any other common-law or statutory power, properly:

(1) take possession of and hold assets owned by the decedent pending distribution or liquidation, including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform the decedent's contracts that continue as obligations of the estate, and execute and deliver such deeds or other documents under such circumstances as the contract may provide, unless the personal representative personally is a party by the terms of the contract;

(4) satisfy written charitable pledges of the decedent, which by their terms survive the death of the decedent;

(5) deposit funds for the account of the estate, including moneys received from the sale of other assets, in federally insured checking accounts, in federally insured interest-bearing accounts or in federally insured short-term loan arrangements, or in accounts or short-term investment trusts administered pursuant to, or in compliance with, the regulations of the United States Comptroller of the Currency, or at the request of the personal representative, agree to deposit any of the assets of the estate with any financial institution in such a manner that the assets cannot be withdrawn or transferred without (A) the written consent of the surety on the bonds or (B) an order of Court; deposits under this subsection shall be made in financial institutions within the District of Columbia or in any state that permits personal representatives to make deposits in the District of Columbia;

(6) acquire or dispose of property, real or personal, including land in this or another jurisdiction, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing, or erect new, party walls or buildings;

(8) subdivide, develop or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on

exchange or partition by giving or receiving consideration; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without the option to purchase or renew, for a term within or extending beyond the period of administration;

(10) vote stocks or other securities in person or by general or limited proxy;

(11) hold a security in bearer form or in the name of a nominee, but, in such case, the personal representative shall be liable for any act of the nominee in connection with the security so held;

(12) obtain insurance to protect the property of the estate against damage, loss, and liability, and to protect the personal representative against liability to third persons;

(13) effect a fair and reasonable compromise with any creditor or obligee;

(14) pay taxes, assessments, and compensation of the personal representative, and other expenses incident to the administration of the estate;

(15) sell or exercise stock subscription, conversion or option rights; consent to or oppose, directly or through a committee or other agent, the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(16) pay the decedent's funeral expenses including the cost of burial space and a suitable tombstone or marker, not exceeding $5,000, except as provided in sections 20-906 and 20-907;

(17) employ, for reasonable compensation, accountants, auditors, investment or financial advisors, attorneys, appraisers, brokers, or other persons with special skills to advise or assist the personal representative in the performance of such representative's administrative duties, and to pay them reasonable compensation and reimbursement for costs incurred;

(18) prosecute or defend or submit to arbitration actions, claims, or proceedings in any appropriate jurisdiction for the benefit of the estate, including the commencement of any personal action that the decedent might have commenced, or to compromise, arbitrate, settle, or otherwise adjust any claims, charges, debts, or demands against or in favor of the estate;

(19) continue unincorporated businesses or ventures in which the decedent was engaged at the time of death (A) in the same business form for a period of not more than 4 months after the representative's appointment if continuation is a reasonable means of preserving the value of the business, including goodwill; provided, that the personal representative shall file a bimonthly statement of income and expenses and a balance sheet with the Register; and (B) throughout the period of administration if the business is incorporated after the death of the decedent in accordance with paragraph (20) of this section;

(20) incorporate businesses or ventures in which the decedent was engaged at the time of death if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

(21) exercise options, rights, and privileges contained in any life insurance policy, annuity, or endorsement contract constituting property of the

estate, including the right to obtain the cash surrender value, convert any such policy to any other type of policy, revoke any mode of settlement, and pay any part or all of the premiums on any such policy or contract;

(22) pay valid claims and distribute the estate as provided in this title;

(23) release or terminate mortgages or security interests, if the obligation secured by the mortgage or security interest was fully satisfied during the decedent's lifetime or during the administration of the estate;

(24) make partial distributions, in cash, in kind, or both, from time to time during the administration;

(25) invest in any real or personal property of the estate; lease, exchange, grant options to purchase, or sell any real or personal property of the estate (except property specifically devised or bequeathed under the will), at public or private sale, for cash or on credit, with or without security; and borrow money for the purpose of protecting real or personal property (and pledge property as security for such loan);

(26) terminate, sublet, or assign a leasehold estate of the decedent which was the decedent's actual residence;

(27) designate the personal representative on any document as an executor, if the decedent died testate, or as an administrator, if the decedent died intestate;

(28) continue any unincorporated businesses or ventures in which the decedent was engaged at the time of his or her death (A) in the same business form for a period of not more than 4 months from the date of appointment of the personal representative if continuation is a reasonable means of preserving the value of the business, including good will; (B) in the same business form for any additional period of time that may be approved by order of the Court after notice to the interested persons; or (C) throughout the period of administration if the business is incorporated after decedent's death in accordance with paragraph (20) of this section; and

(29) provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(zz), 42 DCR 63.)

Cross references. — Retail service station, transfer rights, see § 36-303.05.

Prior Codifications. — 1981 Ed., § 20-741.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

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Actions brought by or on behalf of decedent.

Where Court had construed statute providing that if executors and administrators shall have full power and authority to commence and prosecute any personal action at law or in equity which testator or intestate might have commenced and prosecuted, as not only permitting but requiring the presence of an executor as a plaintiff in an action to set aside a deceased grantor's deed, and that decision was rendered prior to filing of executor's suit and had not been overruled or modified, and certiorari was not sought, executors were warranted in relying on that statute as direct authority to institute an action to avoid testator's deed. D.C. Code 1940, § 20-501. Ramsey v. Curtis, 182 F.2d 687, 1950 U.S. App. LEXIS 2850 (C.A.D.C. 1950).

Where United States marshal was liable to plaintiff for forcible entry late at night of plaintiff's dwelling by his deputies in serving a warrant in a civil proceeding, marshal's subsequent death did not preclude plaintiff from recovering for personal injuries inflicted on him by deputies and his wrongful arrest as elements of his damages by virtue of statute providing that actions for personal injuries should not survive in favor of or against legal representatives of deceased. D.C. Code 1940, §§ 12-101, 20-501. Colpoys v. Foreman, 163 F.2d 908, 1947 U.S. App. LEXIS 2355 (1947).

Act providing that, in tort actions in behalf of a deceased or against a deceased's representative, the right of action shall be limited to damages for physical injuries except for pain and suffering resulting therefrom, permits recovery of damages for physical injury, but excepts therefrom an allowance for pain and suffering, in favor of, or against, a deceased. D.C. Code 1940, §§ 12-101, 20-501. Phillips v. Lust, 82 F.Supp. 63, 1949 U.S. Dist. LEXIS 2989 (D.D.C1949).

In action by administratrix for injuries sustained by deceased in his lifetime, count of complaint alleging that deceased suffered "grievous" and "painful" burns and injuries would not be dismissed, though under statute no recovery could be had for pain and suffering, since it was possible for administratrix to recover for hospital and medical expenses and other disbursements. D.C. Code 1940, §§ 12-101, 20-501. Phillips v. Lust, 82 F.Supp. 63, 1949 U.S. Dist. LEXIS 2989 (D.D.C1949).

Attorney discipline.

Attorney for personal representative of estate engaged in "conduct prejudicial to the administration of justice" where she agreed with attorney representing beneficiary that proceeds would be put in joint account requiring both her signature and that of personal representative, did not do so, became aware of withdrawals by client and, after meeting with Register of Wills about the matter, failed to take any further action to protect the estate assets from her client's looting, all the while knowing that beneficiary had waived statutory bond requirement in reliance on the promise to place the funds under joint control. Code of Prof.Resp., DR 1-102(A)(5). In re Hopkins, 677 A.2d 55, 1996 D.C. App. LEXIS 111 (1996).

While personal representative has various powers with regard to administration of the estate, personal representative is judicially appointed and is subject to court's authority, and estate distribution is a judicial function within prohibition on conduct prejudicial to the administration of justice. Code of Prof.Resp., DR 1-102(A)(5). In re Hopkins, 677 A.2d 55, 1996 D.C. App. LEXIS 111 (1996).

Costs and expenses incurred by representative.

Where executor had probable grounds for bringing suit to set aside testator's deed as forged, they were entitled to charge estate with expenses incurred in litigation. D.C. Code 1940, § 20-501. Ramsey v. Curtis, 182 F.2d 687, 1950 U.S. App. LEXIS 2850 (C.A.D.C. 1950).

Discretion of court.

Trial court did not abuse its discretion by denying petition filed by sister of personal representative of decedent's estate seeking to enjoin personal representative from proceeding with the sale of a parcel of real estate owned by the estate; estate had a total value of approximately $245,000, decedent's three daughters were each entitled to one-third shares worth approximately $81,600, estate lacked sufficient cash to pay such shares unless the property was sold, personal representative desired to forego the animosity involved in co-ownership of the property among her siblings, and sale of the property was authorized by the general statutory grant of powers to personal representatives. Karim v. Gurley (In re Estate of Bates), 948 A.2d 518, 2008 D.C. App. LEXIS 245 (2008).

Documentation.

Disallowance of certain amount of personal representative's expenditures as improper payments was proper where determination that personal representative did not follow rules governing expense documentation and, instead, presented cancelled checks and receipts that either had no relationship to each other or had no relationship to estate was not clearly erroneous. D.C. Code 1981, §§ 20-722(c), 20-723(c), 20-741; Probate Rule 118(a)(1). Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

Family allowance payment.

Full family allowance was payable from net proceeds of sale of real property ordered by

probate court in order to pay decedent's creditors; Probate Reform Act included decedent's real property in his estate, for family allowance purposes. D.C. Code 1981, §§ 19-101(a), 20-101 et seq. In re Estate of Burton, 541 A.2d 599, 1988 D.C. App. LEXIS 76 (1988).

Jurisdiction.

In action in municipal court of District of Columbia wherein writ of attachment is directed to an executor, in connection with an action against a third party who claims an interest in the estate, the interest of other persons in the estate and the exclusive jurisdiction of district court in probate proceedings are fully protected by statutory provision that, if executor is in doubt whether defendant's share of estate will prove sufficient to pay plaintiff's debt, no judgment shall be entered against the executor until passage by probate court of his final or other account showing money or property in his hands to which defendant is entitled. D.C. Code 1940, §§ 11-703, 11-733, 16-301, 16-312, 16-313, 16-333, 20-501. Frank v. Malone, 126 F.2d 651, 1942 U.S. App. LEXIS 4230 (1942).

The District Court for District of Columbia has exclusive jurisdiction of suits against an executor on claims against the estate, but an attachment or garnishment directed to an executor, in connection with an action against a third party who claims an interest in the estate, is not a "suit against executor" within jurisdiction of district court. D.C. Code 1940, §§ 11-703, 16-301, 16-312, 16-313, 16-333, 20-501. Frank v. Malone, 126 F.2d 651, 1942 U.S. App. LEXIS 4230 (1942).

Preservation and maintenance of property—In general.

Specific devisees were liable for estate's income tax liability resulting from interest earned on invested proceeds from sale of specifically devised cooperative apartment interests; exoneration doctrine did not apply in that income taxes were not related to preserving or maintaining exonerated real estate, invested cash was value of fully exonerated and fully preserved and maintained real estate, and specific devisees were entitled to interest which gave rise to tax liability. Lemp v. Keto, 678 A.2d 1010, 1996 D.C. App. LEXIS 118 (1996).

Specific devisees could not be charged interest on estate funds used to pay preservation and maintenance expenses of specifically devised real property given that, under exoneration doctrine, residuary estate was responsible for payment of disputed expenses. Lemp v. Keto, 678 A.2d 1010, 1996 D.C. App. LEXIS 118 (1996).

Real estate taxes on specifically devised property are "preservation expenses" which, under exoneration doctrine, were charged to residuary estate rather than to specific devisees given that failure to pay taxes could result in loss of property. Lemp v. Keto, 678 A.2d 1010, 1996 D.C. App. LEXIS 118 (1996).

Legitimate expenses incurred by personal representative in maintaining specifically devised real property, to which he held legal title until it was distributed and sold, were properly charged against the residue of the estate rather than to the specific devisee, where the property was subject to exoneration and produced no income. D.C. Code 1981, §§ 20-101 et seq., 20-105, 20-109, 20-741(h, j, r). Johnson v. Martin, 567 A.2d 1299, 1989 D.C. App. LEXIS 267 (1989).

Personal representative had statutory authority with respect to specifically devised real estate to pay repair bills, insurance premiums, real estate taxes, water and sewer assessments, and valid claims by utility companies, and to discharge indebtedness secured by deed of trust when he sold the house. D.C. Code 1981, § 20-741. Johnson v. Martin, 567 A.2d 1299, 1989 D.C. App. LEXIS 267 (1989).

— Exoneration doctrine, preservation and maintenance of property.

Exoneration, under which residuary estate is charged with removing liens and paying expenses of preserving and maintaining nonincome producing specifically devised property pending final distribution, is the rule absent contrary expression by the testator. Lemp v. Keto, 678 A.2d 1010, 1996 D.C. App. LEXIS 118 (1996).

Exoneration rule, charging liens and expenses for specifically devised real property to residuary estate, rather than to specific legatees, applies in all cases absent contrary intent by testator, applies during entire period before distribution of estate assets rather than merely as of testator's death, and applies to encumbrances as well as expenses needed to preserve and maintain property before final distribution. Lemp v. Keto, 678 A.2d 1010, 1996 D.C. App. LEXIS 118 (1996).

Doctrine of exoneration applied to specifically devised interests in cooperative apartment properties, making residuary estate liable for maintenance and preservation expenses incurred prior to distribution from estate. Lemp v. Keto, 678 A.2d 1010, 1996 D.C. App. LEXIS 118 (1996).

Fact that real property subject to specific devise is encumbered by mortgage increases likelihood that testator intended exoneration, as well as payment of preservation and maintenance expenses from residuary estate, absent clear expression of testator's intent to the contrary. Lemp v. Keto, 678 A.2d 1010, 1996 D.C. App. LEXIS 118 (1996).

Testator's intent and the personal representative's control of property are critical facts

when determining whether exoneration rule applies to encumbrances and holding expenses of specifically devised real property. Lemp v. Keto, 678 A.2d 1010, 1996 D.C. App. LEXIS 118 (1996).

Omission of instruction in will to "pay all debts" did not rebut presumption of exoneration for specifically devised real property and interest in cooperative apartments. Lemp v. Keto, 678 A.2d 1010, 1996 D.C. App. LEXIS 118 (1996).

Exoneration rule, charging expenses of specifically devised real property to residuary estate rather than specific legatees, was presumed to apply to maintenance and preservation expenses incurred by estate pending final distribution of properties, even though properties were unencumbered. Lemp v. Keto, 678 A.2d 1010, 1996 D.C. App. LEXIS 118 (1996).

Devise of "all right, title, and interest of whatever kind" in cooperative apartments did not negate exoneration; will language was consistent with idea that testator intended to devise full fee interest, devised property did not produce income for estate during period when preservation and maintenance expenses were generated. Lemp v. Keto, 678 A.2d 1010, 1996 D.C. App. LEXIS 118 (1996).

Sale of real and personal property.

All unauthorized sales of estate property by personal representatives, even those at fair market value, were prohibited. D.C. Code 1981, § 20-742(b) (1994); Probate Rule 112. Hines v. Burke (In re Estate of Hines), 715 A.2d 116, 1998 D.C. App. LEXIS 134 (1998).

Heirs were entitled to have personal representative's sale of estate property to herself and her brother set aside, where personal representative sold the property to herself without court permission, without increasing amount of bond, and without informing the other heirs. D.C. Code 1981, § 20-742(b) (1994); Probate Rule 112. Hines v. Burke (In re Estate of Hines), 715 A.2d 116, 1998 D.C. App. LEXIS 134 (1998).

Testamentary provisions.

A will directing executor to sell real property and distribute the proceeds together with personal property amounted to a devise of the real property as well as a bequest of personalty to the executor with the result that nothing descended to the heirs or next of kin who therefore could not maintain suit to avoid deed executed by testatrix on ground of undue influence. D.C. Code 1940,§§ 12-101, 20-310, 20-501. Kashouty v. Deep, 126 F.2d 233, 1942 U.S. App. LEXIS 4110 (1942).

Where grantor left will directing executor to sell real property and distribute the proceeds, until the will was proved invalid, grantor's heirs and next of kin could not maintain suit to avoid the deed on ground of undue influence. D.C. Code 1940, §§ 12-101, 20-310, 20-501. Kashouty v. Deep, 126 F.2d 233, 1942 U.S. App. LEXIS 4110 (1942).

§ 20-742. Court order.

A personal representative may at any time petition the Court for permission to act in any matter relating to the administration of the estate.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Apr. 27, 1994, D.C. Law 10-110, § 3, 41 DCR 1023; Mar. 21, 1995, D.C. Law 10-241, § 31, 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-742.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-110. — Law 10-110, the "Property Conveyancing Revision Act of 1994," was introduced in Council and assigned Bill No. 10-88, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on January 4, 1994, and February 1, 1994, respectively. Signed by the Mayor on February 18, 1994, it was assigned Act No. 10-198 and transmitted to both Houses of Congress for its review. D.C. Law 10-110 became effective on April 27, 1994.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

CASE NOTES

ANALYSIS

Settlement of actions.
Standing.

Settlement of actions.

Personal representative of decedent's estate was properly granted authority to settle litigation where personal representative had consid-

ered possible defenses to litigation and had concluded that success was uncertain, suit posed substantial risk to estate, and settlement was reasonable. D.C. Code 1981, § 20-742. In re Estate of Dickson, 559 A.2d 331, 1989 D.C. App. LEXIS 108 (1989).

Trial court orders granting petitions for authority to settle litigation will be upheld unless court abuses its discretion. D.C. Code 1981, § 20-742. In re Estate of Dickson, 559 A.2d 331, 1989 D.C. App. LEXIS 108 (1989).

Standing.

Second successor personal representative of decedent's estate had standing to object to the side agreement on fees that first successor personal representative entered into with some of the heirs of decedent's estate, though the heirs that entered into the side agreement did not object or complain, as second successor personal representative only learned about the side agreement when he discovered a substantial discrepancy between the amount of assets shown in probate division's account and the assets that first successor personal representative turned over to him, missing assets and the side agreement with some of the heirs were plainly matters that related to the administration of the estate, and second successor personal representative had a duty to take control of decedent's estate and maintain any action necessary to recover possession of estate property. Estate of Green v. Loewinger, 912 A.2d 1198, 2006 D.C. App. LEXIS 647 (2006).

§ 20-743. Improper exercise of power; breach of fiduciary duty.

If any personal representative's exercise of power concerning the estate is improper, such representative is liable for breach of fiduciary duty to interested persons for resulting damage or loss to the same extent as a trustee of an express trust. The exercise of power in violation of a Court order, or contrary to the provisions of the will may be a breach of duty. The rights of purchasers and others dealing with a personal representative are determined as provided in section 20-744 and are not necessarily affected by the fact that the personal representative breached a fiduciary duty in the transaction.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-743.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

CASE NOTES

ANALYSIS

Breaches of fiduciary duty.
Compensation.
Diminishment of value of estate.
Documentation.
In general.
Sanctions.

Breaches of fiduciary duty.

Personal representative breaches her fiduciary duty when she fails to disclose material information to the beneficiaries. D.C. Code 1981, § 20-701(a). Hines v. Burke (In re Estate of Hines), 715 A.2d 116, 1998 D.C. App. LEXIS 134 (1998).

Compensation.

Compensation to a personal representative of an estate for litigation expenses incurred while pursuing an estate's claims is contingent only upon a finding of good faith and just cause, which is distinct from the obligations incumbent upon a personal representative as a fiduciary. In re Estate of Bernstein, 3 A.3d 337, 2010 D.C. App. LEXIS 507 (2010).

Diminishment of value of estate.

Legatees under will had standing to raise objections to, and seek redress for, actions or inactions by personal representatives, as to inter vivos pour-over trust, that diminished size of property interests passing to legatees through probate estate. D.C. Code 1981, § 20-743. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Documentation.

Disallowance of certain amount of personal representative's expenditures as improper payments was proper where determination that personal representative did not follow rules governing expense documentation and, instead,

presented cancelled checks and receipts that either had no relationship to each other or had no relationship to estate was not clearly erroneous. D.C. Code 1981, §§ 20-722(c), 20-723(c), 20-741; Probate Rule 118(a)(1). Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

Trial court did not err in refusing to authorize administrative fees that personal representative had paid to himself out of estate funds where record showed that representative failed to file documentation required in order to apply statutory factors for determining amount of compensation. D.C. Code 1981, § 20-751(c). Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

In general.

All unauthorized sales of estate property by personal representatives, even those at fair market value, were prohibited. D.C. Code 1981, § 20-742(b) (1994); Probate Rule 112. Hines v. Burke (In re Estate of Hines), 715 A.2d 116, 1998 D.C. App. LEXIS 134 (1998).

Residual legatees under will, whose potential property interests in inter vivos trust flowed from trust's pour-over provision directing the payment of assets to personal representatives of settlor's estate upon settlor's death to be distributed under will, could not proceed directly against trustees for alleged misconduct, as if beneficiary of trust; rather, legatees were required to first seek relief against personal representatives of estate, with whom they had fiduciary relationship, in probate court, for failing to pursue claims of trustee misconduct. D.C. Code 1981, §§ 20-101(d)(1)(C), 20-743. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Sanctions.

Where executor has made improper payment of claims but has not disposed of salable property unauthorizedly, court's only direct sanction is to order executor to correct or protect against his impropriety, and if executor fails to comply, then to remove him. D.C. Code 1961, §§ 11-501, 11-513, 11-514, 18-512, 18-602, 20-107, 20-108, 20-118, 20-302, 20-504, 20-603, 22-1210; U.S.Dist.Ct. Rules D.C., rule 46(b). Henry v. Grimes, 334 F.2d 550, 1964 U.S. App. LEXIS 5768 (C.A.D.C. 1964).

§ 20-743.01. Sale, encumbrance, or transaction involving conflict of interest; voidable; exceptions.

Any sale, lease, or encumbrance to the personal representative, the personal representative's spouse, agent or attorney, or any corporation, trust, or other entity in which such individual has a substantial beneficial interest, or any other transaction which is affected by a substantial conflict of interest on the part of the personal representative, may be set aside by the Court in proceedings initiated by any interested person except one who has consented after fair disclosure (and any person or entity claiming by or through such interested person) unless:

(1) the will authorized such dealings with the personal representative, either generally or with regard to a specific transaction or type of transaction;

(2) a contract entered into by the decedent authorized such a transaction; or

(3) the transaction is approved by the Court after notice to the interested persons.

(Mar. 21, 1995, D.C. Law 10-241, § 3(bbb), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-743.1.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

Section 32(e) of D.C. Law 15-354 provided that the section designation of § 20-743.1 of the District of Columbia Official Code is redesignated as § 20-743.01.

CASE NOTES

ANALYSIS

Exculpatory provisions of will.
Self-dealing.

Exculpatory provisions of will.

Provision of will which granted plenary powers to personal representative and purportedly made him unaccountable to court conflicted with Probate Code and was thus invalid. D.C. Code 1981, § 20-101 et seq. Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

Clause in will relieving personal representative from personal liability for losses resulting from exercise of any discretionary power, except in case of willful default or bad faith, did not apply to representative's nondiscretionary, statutory duties to account for and preserve all receipts and to receive court approval before taking compensation from estate. D.C. Code 1981, §§ 20-721 to 20-726, 20-751. Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

Court generally enforces exculpatory or immunity clause that relieves personal representative from personal liability for losses resulting from failure to meet required standard of care, unless clause is contrary to statute or public policy, and exculpatory clause that excuses self-dealing or attempts to limit liability for breaches of duty committed in bad faith, intentionally, or with reckless indifference to interest of beneficiary, is generally considered to be against public policy. Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

Self-dealing.

Heirs were entitled to have personal representative's sale of estate property to herself and her brother set aside, where personal representative sold the property to herself without court permission, without increasing amount of bond, and without informing the other heirs. D.C. Code 1981, § 20-742(b) (1994); Probate Rule 112. Hines v. Burke (In re Estate of Hines), 715 A.2d 116, 1998 D.C. App. LEXIS 134 (1998).

Personal representative, whose improper sale of estate property to herself was set aside, was not entitled to reimbursement for monies she paid or invested in the property, since record did not contain any information about the amount or extent of any such monies. Hines v. Burke (In re Estate of Hines), 715 A.2d 116, 1998 D.C. App. LEXIS 134 (1998).

When a personal representative directly or indirectly purchases on her own account an asset of the estate at a sale which was not authorized by the court or the beneficiaries, the sale is voidable at the behest of any beneficiary. Hines v. Burke (In re Estate of Hines), 715 A.2d 116, 1998 D.C. App. LEXIS 134 (1998).

§ 20-744. Protection of person dealing with personal representative.

Except as otherwise provided in section 20-753, a person who in good faith either assists or deals with a personal representative for value is protected as if the personal representative properly exercised his power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in section 20-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not in substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(ccc), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-744.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

Subchapter VI. Claims by Personal Representatives and Attorneys.

§ 20-751. Compensation.

Except as may otherwise be ordered by the Court for good cause shown in respect to a supervised personal representative or a special administrator, a personal representative is entitled to reasonable compensation for services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision either before or after qualifying and be entitled to reasonable compensation. A personal representative also may renounce the right to all or any part of the compensation. A written renunciation of fee may be filed with the Court.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(ddd), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-751.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

CASE NOTES

Analysis

Appellate review.
Attorney fees.
Court authorization of fees.
Personal representative fees and costs.
Personal services.
Testamentary provisions.

Appellate review.

Under former statute regarding compensation of personal representatives of estates, probate court had complete discretion as to whether to approve requests for compensation, and thus, appellate court reviews such decisions for abuse of discretion. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Under the former version of the statute governing compensation for work performed with respect to the administration of an estate by each personal representative or any attorney employed by them, a trial court's decision to deny compensation, if based upon application of the statutory factors, is an exercise of discretion that will not be disturbed absent abuse. In re Estate of King, 769 A.2d 771, 2001 D.C. App. LEXIS 70 (2001).

Under the former version of the statute governing compensation for work performed with respect to the administration of an estate by each personal representative or any attorney employed by them, the failure to make appropriate findings of fact is itself an abuse of

discretion. In re Estate of King, 769 A.2d 771, 2001 D.C. App. LEXIS 70 (2001).

The Court of Appeals reviews the trial court's award of attorney fees to a personal representative for abuse of discretion, whether they are awarded as an imposition of sanctions, or as reimbursement for work as personal representative. In re Estate of King, 769 A.2d 771, 2001 D.C. App. LEXIS 70 (2001).

Probate court was not required to make findings on statutory factors before denying request for compensation by former copersonal representative of estate, based on representative's "unclean hands"; findings on statutory factors would provide no assistance to appellate court reviewing denial of compensation. D.C. Code 1981, § 20-751(c) (1994). Lemp v. Keto, 678 A.2d 1010, 1996 D.C. App. LEXIS 118 (1996).

When trial court grants or denies request for compensation by estate representative based on statutory factors, failure to make appropriate findings of fact as to each factor is an abuse of discretion. D.C. Code 1981, § 20-751(c, f) (1994). Lemp v. Keto, 678 A.2d 1010, 1996 D.C. App. LEXIS 118 (1996).

Trial court did not err in refusing to authorize administrative fees that personal representative had paid to himself out of estate funds where record showed that representative failed to file documentation required in order to apply statutory factors for determining amount of compensation. D.C. Code 1981, § 20-751(c). Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

Trial court's decision to deny compensation to personal representative, if based upon application of statutory factors for calculation of compensation, is exercise of discretion that will not be disturbed absent abuse. D.C. Code 1981, § 20-751(c). Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

If trial court's determination to grant or deny request for compensation for work performed with respect to administration of estate is based upon statutory factors and is accompanied by findings of fact, then appellate court will affirm absent abuse of discretion; however, failure to make appropriate findings of fact is itself abuse of discretion. D.C. Code 1981, §§ 20-751, 20-751(c). Williams v. Ray, 563 A.2d 1077, 1989 D.C. App. LEXIS 166 (1989).

Attorney fees.

Under the former version of the statute governing compensation for work performed with respect to the administration of an estate by each personal representative or any attorney employed by them, a request for such compensation must be accompanied by documentation showing a reasonable relationship between the requested fees and the nature of the services performed, the reasonableness of the time spent, the number of hours expended, the applicant's usual hourly compensation, and the results achieved. In re Estate of King, 769 A.2d 771, 2001 D.C. App. LEXIS 70 (2001).

While institutional trustee/personal representative's failure, as personal representative, to provide final account of trust to legatees until compelled to do so by court order warranted order awarding institutional trustee/personal representative only one-half of its requested personal representative compensation, greater reduction was not required. In re Estate of King, 769 A.2d 771, 2001 D.C. App. LEXIS 70 (2001).

Method of calculating personal representative fees for certified public accountant (CPA) who also served as non-institutional co-trustee was unclear, thus requiring remand for further fact-finding; actual net result, given that CPA had been overpaid $14,835.42 from trust, was award of personal representative fees in that amount, approximately 25% reduction from his requested compensation, but if, as trial court stated, CPA was to bear "same burden" as institutional co-trustee for failure to disclose final account to legatees, he should have been entitled to no more than $10,000 of his requested $20,000 personal representative compensation. In re Estate of King, 769 A.2d 771, 2001 D.C. App. LEXIS 70 (2001).

Probate judge had jurisdiction to treat "exceptions" filed by estate's attorney to personal representative's unapportioned request for compensation as motion seeking compliance with probate rule contemplating apportionment of attorney's fees; although attorney for estate was not "interested person" permitted to file exceptions under Reform Act and attorney's pleading was deficient as motion, personal representative was not prejudiced thereby. D.C. Code 1981,§§ 11-721(e), 20-751; Probate Rule 124; Civil Rule 12-I(e). Poe v. Noble, 525 A.2d 190, 1987 D.C. App. LEXIS 349 (1987).

Probate judge was required to consider statutory factors, such as nature of work performed, time spent, and results achieved, in apportioning fees between personal representative and attorney for estate. D.C. Code 1981, § 20-751(c). Poe v. Noble, 525 A.2d 190, 1987 D.C. App. LEXIS 349 (1987).

Counsel who filed a statement of services, which included improperly recorded time entries rounded to quarter-hour increments, had fees reduced by ten percent of the total fees. In re Estate of Eskind, 122 WLR 513 (Super. Ct. 1994).

The maximum hour rounding that should be permitted, and which the vast majority of attorneys practice, is to a tenth of an hour. In re Estate of Torchiana, 121 WLR 2477 (Super. Ct. 1993).

Court authorization of fees.

Trial court could not impose sanction against attorney who represented personal representa-

tive of estate in estate-related matter, on ground that attorney failed to obtain court's approval before accepting compensation from personal representative's personal funds for estate-related services; the governing statute did not require such court approval, and even if attorney was on notice that trial court had required prior court approval in a previous matter that attorney had worked on, the previous matter was an intervention case involving a different statute, which was recently determined to not require prior court approval where the fee came from personal funds. In re Estate of Wilson, 935 A.2d 323, 2007 D.C. App. LEXIS 648 (2007).

Under prior version of statute regarding compensation for attorneys for services in regards to estate, attorney who was retained by personal representative of estate to assist personal representative in acquiring possession of decedent's residence was not required to seek prior court approval before accepting compensation from personal representative's personal funds for the estate-related services. In re Estate of Wilson, 935 A.2d 323, 2007 D.C. App. LEXIS 648 (2007).

Attorney who accepted attorney fees from an estate, without filing with the probate court a petition for such fees, as was then required by statute, violated the disciplinary rule prohibiting an attorney from collecting an illegal fee. In re Travers, 764 A.2d 242, 2000 D.C. App. LEXIS 290 (2000).

Attorney who accepted attorney fees from an estate, without filing with the probate court a petition for such fees, as was then required by statute, did not violate professional responsibility rule requiring an attorney, when terminating representation, to timely refund any advance payment of attorney fees that had not been earned; there was no evidence that the attorney did not earn his fee or that it was unreasonable. In re Travers, 764 A.2d 242, 2000 D.C. App. LEXIS 290 (2000).

Attorney who failed to pay $3,652.74 judgment rendered against him for accepting attorney fees from an estate, without filing with the probate court a petition for such fees, as was then required by statute, interfered with the administration of justice, in violation of professional responsibility rules; the attorney violated a court order, and the personal representative of the estate had to make repeated demands for payment, had to file a complaint with the Clients' Security Trust Fund, and, most important, had been unable to close the estate and distribute its assets for several years. In re Travers, 764 A.2d 242, 2000 D.C. App. LEXIS 290 (2000).

Attorney's failure to pay $3,652.74 judgment rendered against him for accepting attorney fees from an estate, without filing with the probate court a petition for such fees, as was then required by statute, did not interfere with the administration of justice, in violation of professional responsibility rules, before the estate could have been closed and before the Court of Appeals had affirmed the judgment against attorney. In re Travers, 764 A.2d 242, 2000 D.C. App. LEXIS 290 (2000).

Assuming, without deciding, that attorney who was joint signatory on estate account was "entrusted" with the funds in that account, any misappropriation by attorney, who had accepted attorney fees from the estate without filing with the probate court a petition for such fees, as was then required by statute, was negligent rather than intentional or reckless; attorney had "sincerely believed" that the statute had not applied to him, and he had obtained consents of heirs and had filed those consents with the court. In re Travers, 764 A.2d 242, 2000 D.C. App. LEXIS 290 (2000).

Personal representative had no right to take fees from estate before court authorization. D.C. Code 1981, § 20-751(a). Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

The court's concern is nonsupervision of fees, when supervision is required by statute. In re Estate of Eskind, 122 WLR 513 (Super. Ct. 1994).

Personal representative fees and costs.

First successor personal representative of decedent's estate breached his fiduciary duty to act in the best interest of estate's heirs by seeking additional fees from heirs after probate court had reduced his requested fees as a sanction for his overbilling and lack of documentation, and thus side agreement regarding his fees that personal representative entered into with some of estate's heirs was invalid, where personal representative asked for a stay of distributions from the court in order to appeal reduction of his requested fees, wrote letter to heirs without the court's knowledge telling them if they did not pay his additional fees he would not be able to make a distribution until case was decided on appeal, violated stay for those heirs who agreed to pay an additional fee, and did not make a distribution to those heirs who did not agree to pay the additional fee even after his appeal was dismissed. Estate of Green v. Loewinger, 912 A.2d 1198, 2006 D.C. App. LEXIS 647 (2006).

Personal services.

Paralegal services which estate's personal representative provided to estate's tax counsel were personal services for which personal representative was not entitled to compensation, under will which authorized personal representative to receive compensation only for daily expenses and for unusual expenses deemed reasonable by the probate court. Valentine v.

Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Testamentary provisions.

Clause in will relieving personal representative from personal liability for losses resulting from exercise of any discretionary power, except in case of willful default or bad faith, did not apply to representative's nondiscretionary, statutory duties to account for and preserve all receipts and to receive court approval before taking compensation from estate. D.C. Code 1981, §§ 20-721 to 20-726, 20-751. Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

§ 20-752. Expenses of estate litigation.

Without regard to the provisions of section 20-751, when a personal representative or a person nominated as personal representative defends or prosecutes in good faith and with just cause any proceeding relating to the decedent's estate, whether successful or not, such personal representative shall be entitled to receive from the estate any necessary expenses and disbursements relating to such proceeding.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-752.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-701.

CASE NOTES

ANALYSIS

Good faith.
In general.

Good faith.

Personal representative of estate pursued litigation, seeking return of funds that testator transferred to nephew and a limited liability company (LLC) created by nephew, in good faith and with just cause, as required in order to be entitled to receive compensation from the estate for necessary litigation expenses, and trial court could not restrict compensation to funds available in the residuary estate, though litigation was resolved in nephew's favor, where there was evidence that testator was incapable of consenting to the transfers, nephew's wife urged personal representative to recover a transfer that depleted the residuary estate to which she was entitled, in personal representative's action seeking direction trial court appointed a guardian ad litem to protect the interests of nephew's children, and personal representative ceased litigation after trial court found that personal representative did not owe nephew's children a fiduciary duty. In re Estate of Bernstein, 3 A.3d 337, 2010 D.C. App. LEXIS 507 (2010).

In general.

Compensation to a personal representative of an estate for litigation expenses incurred while pursuing an estate's claims is contingent only upon a finding of good faith and just cause, which is distinct from the obligations incumbent upon a personal representative as a fiduciary. In re Estate of Bernstein, 3 A.3d 337, 2010 D.C. App. LEXIS 507 (2010).

Remand was required of decision denying legatees' request for attorney fees they incurred in underlying action to compel trustees, who were also personal representatives of settlor's estate, to disclose final account to legatees; while trustees did prevail in underlying action due to legatees' lack of standing, trial court was required to address whether bad faith exception to "American Rule" applied, as question remained as to whether trustees should have continued to defend lawsuit on ground of standing, with concomitant anticipated drain on assets of estate, when they easily could have mooted cause of litigation and avoided financial burden on trust and estate simply by meeting their obligations as personal representatives to turn over final account. In re Estate of King, 769 A.2d 771, 2001 D.C. App. LEXIS 70 (2001).

Remand was required of approximate $125,000 attorney fee award to personal representatives of settlor's estate, who were also trustees, which fees were allegedly incurred in exercise of their duty, as personal representatives, to monitor underlying litigation against them by legatees, who sought to compel personal representatives to turn over final account; trial court did not parse submission supporting fee request nor explain need for

extensive monitoring represented by fee of that magnitude. In re Estate of King, 769 A.2d 771, 2001 D.C. App. LEXIS 70 (2001).

Deceased's estate was not required to wait until end of litigation in order to request that portion of attorney fees be paid from estate assets. D.C. Code 1981, § 20-752. Duggan v. Keto, 554 A.2d 1126, 1989 D.C. App. LEXIS 32 (1989).

Probate judge was required to consider statutory factors, such as nature of work performed, time spent, and results achieved, in apportioning fees between personal representative and attorney for estate. D.C. Code 1981, § 20-751(c). Poe v. Noble, 525 A.2d 190, 1987 D.C. App. LEXIS 349 (1987).

Probate judge had jurisdiction to treat "exceptions" filed by estate's attorney to personal representative's unapportioned request for compensation as motion seeking compliance with probate rule contemplating apportionment of attorney's fees; although attorney for estate was not "interested person" permitted to file exceptions under Reform Act and attorney's pleading was deficient as motion, personal representative was not prejudiced thereby. D.C. Code 1981,§§ 11-721(e), 20-751; Probate Rule 124; Civil Rule 12-I(e). Poe v. Noble, 525 A.2d 190, 1987 D.C. App. LEXIS 349 (1987).

§ 20-753. Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.

(a) On petition of any interested person (other than one who has consented after fair disclosure, and any person or entity claiming by or through such interested person) or on appropriate motion if administration is supervised, and after notice to all interested persons and hearing, the reasonableness of the need for or scope of employment of any person or entity employed by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person or entity so employed, or the reasonableness of the compensation claimed or taken by the personal representative for the personal representative's own services, may be reviewed by the Court. Any person or entity who has received from an estate compensation for services rendered in excess of what the Court finds to be reasonable may be ordered to make appropriate refunds if such person or entity was given due notice of the petition and hearing, and the right to participate in such hearing.

(b) In determining the reasonableness of any employment or compensation as provided in subsection (a) of this section, the Court shall consider the following factors (as shown in the verified statements of the personal representative or of any other recipient of such compensation), as well as any other factors deemed relevant by the Court:

(1) the reasonable relationship of the compensation to the nature of the work performed;

(2) any estimate of such compensation provided to the personal representative (or to the interested persons, in the case of compensation to the personal representative who is also counsel for the estate);

(3) the reasonableness of the time spent, including the number of hours spent and the usual hourly compensation for the work performed;

(4) the nature and complexity of the matters involved and difficulties encountered, and the results achieved; and

(5) whether or not all relevant time limitations have been met (or the reasons for any delay).

(c) The payment of any compensation to any attorney pursuant to this provision (including compensation taken or claimed by an attorney as personal representative), even if later ordered by the Court to be refunded to the estate in whole or in part, shall not in and of itself be considered to be a taking or misappropriation of client funds under (or any other such violation of) any applicable ethical or disciplinary statutes or rules by that attorney.

(Mar. 21, 1995, D.C. Law 10-241, § 3(eee), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-753.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-701.01.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-701.01.

CASE NOTES

ANALYSIS

Authority of court.
In general.
Standard of review.

Authority of court.

Although the probate court, when awarding counsel fees to attorney retained by personal representative of estate, has authority to determine the reasonable number of hours and the reasonable hourly rate, it must consider the following factors: (1) time, labor, and skill to perform the legal services; (2) fee customarily charged in the area for similar services; (3) attorney's experience and ability; and (4) limitations imposed by the client. Snead v. Watkins (In re Estate of McDaniel), 953 A.2d 1021, 2008 D.C. App. LEXIS 286 (2008).

In general.

Trial court's refusal to enforce order requiring co-representative of estate to return to court registry the money that was released to her for compensation for purported extraordinary services rendered moot her cross-appeal, in which co-representative challenged order; at time of cross-appeal, co-representative was neither held in contempt nor sanctioned for her failure to return money. In re Estate of Murrell, 878 A.2d 462, 2005 D.C. App. LEXIS 320 (2005).

Court of Appeals reviews the reasonableness of a trial court's award of compensation to representative of estate for abuse of discretion. In re Estate of Murrell, 878 A.2d 462, 2005 D.C. App. LEXIS 320 (2005).

Trial court's failure to consider factors enumerated in statute governing compensation of personal representatives before granting co-representative's request for compensation for extraordinary services in amount of $59,242.50 necessitated remand, for determination as to whether such additional compensation was reasonable under statute. In re Estate of Murrell, 878 A.2d 462, 2005 D.C. App. LEXIS 320 (2005).

Paralegal services which estate's personal representative provided to estate's tax counsel were personal services for which personal representative was not entitled to compensation, under will which authorized personal representative to receive compensation only for daily expenses and for unusual expenses deemed reasonable by the probate court. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Trial court would review the probate court's award of attorney fees to estate's tax counsel for abuse of discretion. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

The probate court is to consider specific statutory factors in arriving at its decision regarding an award of attorney fees to an estate's counsel. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

The probate court's failure to make appropriate findings of fact is itself an abuse of discretion, as to an award of attorney fees to an estate's counsel. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Probate court's denial of some of the attorney fees requested by tax counsel for estate was not

an abuse of discretion, where probate court considered the proper statutory factors, made findings as to those factors, and clearly articulated what hours should be compensated, why some time charged was disallowed, and the appropriate hourly rate for the time allowed. Valentine v. Elliott (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Compensation of $15,000, rather than $75,000 proposed by personal representative of unsupervised estate, was reasonable compensation, where personal representative offered post hoc reconstruction of his hours, legatees were not obscure or difficult to locate, there was no showing that estate tax returns involved any unusual complexity, and overall administration of estate posed no significant difficulties. In re Estate of Clarence Pechacek, 135 WLR 177 (Super. Ct. 2006).

Standard of review.

Appellate court reviews probate court's decision to grant or deny requests for counsel fees, and the reasonableness of probate court's award of those fees, for abuse of discretion. Snead v. Watkins (In re Estate of McDaniel), 953 A.2d 1021, 2008 D.C. App. LEXIS 286 (2008).

CHAPTER 9. CLAIMS.

Sec.
20-901. Claim not paid in normal course of administration.
20-902. Effect of statute of limitations.
20-903. Limitation on presentation of claims against the estate.
20-904. Exempt assets.
20-905. Manner of presentation of claim.
20-906. Order of payment.
20-907. Funeral expenses.
20-908. Action on claims; remedy for failure to act.
20-909. Payment of claim.
20-910. Meeting of creditors.
20-911. Claim not yet due.
20-912. Secured claim.
20-913. [Repealed].
20-914. Execution and levy prohibited.

§ 20-901. Claim not paid in normal course of administration.

No proceeding to enforce a claim against a decedent's estate may be revived or commenced before the appointment of a personal representative. After appointment, and until the estate is closed, the procedures prescribed by this chapter shall be followed. After the estate is closed, a creditor whose claim has not been barred may recover directly from the persons to whom property has been distributed as provided in sections 20-1302 and 20-1303 or from a personal representative individually as provided in section 20-1303.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-901.

Legislative history of Law 3-72. — Law 3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

CASE NOTES

ANALYSIS

Collateral actions and proceedings.
Construction and application.
Rights of claimants.
Void contracts.

Collateral actions and proceedings.

Residual legatees under will, whose potential property interests in inter vivos trust flowed from trust's pour-over provision directing the payment of assets to personal representatives of settlor's estate upon settlor's death to be distributed under will, could not proceed directly against trustees for alleged misconduct, as if beneficiary of trust; rather, legatees were required to first seek relief against personal representatives of estate, with whom they had fiduciary relationship, in probate court, for failing to pursue claims of trustee misconduct. D.C. Code 1981, §§ 20-101(d)(1)(C), 20-743. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Under normal circumstances personal representatives, not legatees, would assert interests of estate against pour-over trustees. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

Trust beneficiary generally cannot bring action directly against third-party wrongdoer for alleged harm to trust unless beneficiary is in possession of subject matter of trust; rather, his relief is action in equity against trustee to compel trustee to proceed against third party, although for purposes of judicial economy third party may also be joined as defendant in beneficiary's action. Restatement (Second) of Trusts § 281. Rearden v. Riggs Nat'l Bank, 677 A.2d 1032, 1996 D.C. App. LEXIS 113 (1996).

If defendants were entitled to have their legal fees reimbursed as "protectors" of the estate of corporation's founder and of corporation, they had to collect them from the fund created by the judgment, not from plaintiffs who brought unsuccessful action seeking specific performance of a buy-sell agreement concerning shares of the corporation. Launay v.

Launay, Inc., 497 A.2d 443, 1985 D.C. App. LEXIS 467 (1985).

Construction and application.

Statute precluding "proceeding" to enforce claim against decedent's estate before appointment of personal representative prohibited only the filing of lawsuits, not the presentation of claims, before appointment of personal representative. D.C. Code 1981, § 20-901. District of Columbia v. Gantt, 558 A.2d 1120, 1989 D.C. App. LEXIS 73 (1989).

Rights of claimants.

The disallowance of landlord's claim against his former tenant's estate for unpaid rent and damages in the amount of $24,528 by the personal representatives in abbreviated probate proceedings did nothing to alter landlord's status as an "interested person" who was entitled to mandatory standard probate proceedings; the claim was neither barred by failure to properly present the claim, nor discharged through payment by the estate. D.C. Code 1981, §§ 20-311, 20-321, 20-322, 20-704. In re Estate of Wilson, 743 A.2d 719, 2000 D.C. App. LEXIS 26 (2000).

Void contracts.

Contract by which attorney was employed to facilitate disposition of estate was null and void, as its purpose was to nonjudicially dispose of decedent's estate, which was not legally possible under provisions of Probate Reform Act, and thus trustee was under no duty to pay legal service fees. D.C. Code 1981, §§ 19-301, 20-101 et seq., 20-105, 20-109, 20-357. Richardson v. Green, 528 A.2d 429, 1987 D.C. App. LEXIS 384 (1987).

§ 20-902. Effect of statute of limitations.

Unless a contrary intent is expressly indicated in the will, no claim which was barred by any statute of limitations at the time of the decedent's death shall be allowed or paid. In an action against the estate of a deceased person, the interval between the death of the deceased and 6 months after the date of the first publication of notice of the appointment of a personal representative (not to exceed 2 years) shall not be computed as a part of the period within which the action must be brought.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-902.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-901.

§ 20-903. Limitation on presentation of claims against the estate.

(a) *Requirement of presentation; time; limitation.* — Except as otherwise expressly provided by statute with respect to claims of the United States and the District of Columbia, (1) all claims against a decedent's estate, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or other legal basis, shall be barred against the estate, the personal representative, and the heirs and legatees, unless presented within 6 months after the date of the first publication of notice of the appointment of a personal representative; and (2) all claims against the estate based on the conduct of or a contract with a personal representative shall be barred unless an action is commenced against the estate within 6 months of the date the claim arose.

(b) *Liens not affected.* — Nothing in this section shall affect or prevent any action or proceeding to enforce any mortgage, pledge, judgment, or other recorded or otherwise perfected security interest on property of the estate.

(c) *Action instituted before death.* — Nothing in this section shall affect any action that was commenced against the decedent if the decedent had been duly served with process before death; provided, however, that the personal

representative shall not be personally liable on account of having paid a claim or distributed assets, without taking into consideration claims prosecuted in accordance with this subsection if, at the time of payment or distribution (1) the personal representative had no actual knowledge of such claim, and (2) the claimant had not timely presented such claim in accordance with section 20-905.

(d) *Claims covered by insurance.* — Notwithstanding the provisions of this section, no claim that survives death shall be barred if: (1) the claimant commences an action against the estate within the period of limitations generally applicable to such causes of action; (2) the decedent was covered by a liability insurance policy at the time of the occurrence on which the claim is based; and (3) the subject matter of the claim is within the scope of that policy; provided, that in that cause of action recovery shall be limited to amounts payable under such liability insurance policy.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-903.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-901.

CASE NOTES

ANALYSIS

Construction and application.
Construction with other sections.
Equitable relief.
Exoneration.
Knowledge of claim by personal representative.
Purpose.
Rights of claimants.
Statement and verification of claim.
Validity of related law.

Construction and application.

Statute governing time period for presentation of claims against decedent's estate created cutoff point, not starting point, for filing claims against decedent's estate; statute did not preclude filing claim before notice of appointment of personal representative. D.C. Code 1981, § 20-903(a). District of Columbia v. Gantt, 558 A.2d 1120, 1989 D.C. App. LEXIS 73 (1989).

Fact that personal representative has constitutional obligation to notify all "known or reasonably ascertainable creditors"—and, a fortiori, all creditors whose actual claims are known—does not necessarily suggest constitutional responsibility to honor all such claims irrespective of creditor's efforts to comply with statutory claims procedures once notified; at least as to creditors who are "known or reasonably ascertainable," but whose precise claims have not been revealed, personal representative has no implied obligation to honor claims that are not timely presented in response to required actual notice. D.C. Code 1981, §§ 20-903(a), 20-905, 20-905(a, c). District of Columbia v. Gantt, 558 A.2d 1120, 1989 D.C. App. LEXIS 73 (1989).

The docketing of a duly authenticated claim against a decedent's estate in office of register of wills tolls the general three-year statute of limitations and brings the claim within special statute of limitations protecting claimant until three months after claim is rejected or disputed by the executor or administrator. D.C. Code §§ 18-509, et seq., 20-1301 et seq., 20-1315, 20-1318, 20-1323, 20-1324. American Sec. & Trust Co. v. Bindeman, 303 A.2d 188, 1973 D.C. App. LEXIS 261 (1973).

Construction with other sections.

One-year statute of limitations governing claims of personal liability against a personal representative, rather than six-month statute of limitations governing creditors' claims against an estate, applied in probate proceedings to decedent's first cousin's cross-claim against first cousins once removed, in which first cousin requested an accounting, revocation of the letters of administration issued to first cousins once removed, and an order barring further transactions by them and requiring the return of all money and property they distributed. D.C. Code 1981, §§ 20-903, 20-1303. In re Estate of Derricotte, 744 A.2d 535, 2000 D.C. App. LEXIS 11 (2000).

Equitable relief.

Claimants against decedent's estate were not entitled, merely by virtue of interim, respective appointments of receiver and bankruptcy trustee for claimants, to equitable relief from

time requirements for filing suit on claims which were subject of notices of disallowance by estate; at the very least, there was constructive notice of the disallowances, and claimants' representatives could and should have acted earlier. D.C. Code 1981, § 20-908. Eastern Indem. Co. v. Content, 543 A.2d 1361, 1988 D.C. App. LEXIS 110 (1988).

Exoneration.

Probate Reform Act did not explicitly repeal common-law doctrine of exoneration. D.C. Code 1981, §§ 20-105, 20-106, 20-903, 20-903(a). Martin v. Johnson, 512 A.2d 1017, 1986 D.C. App. LEXIS 381 (1986).

Probate Reform Act provisions generally abolishing distinction between real and personal property for payment of debts and establishing procedures to be followed by secured creditor in obtaining payment on debt from estate did not fairly express intent to abolish common-law doctrine of exoneration which provides direction as to whether liens on real property which is subject to specific devise, for which testator was personally obligated, are to pass with property or be discharged at expense of residuary legatee or distributee of personal estate. D.C. Code 1981, §§ 1-101 et seq., 20-105, 20-106, 20-903(a). Martin v. Johnson, 512 A.2d 1017, 1986 D.C. App. LEXIS 381 (1986).

Knowledge of claim by personal representative.

Failure by testator's creditors to file claims against Maryland testator's ancillary estate in probate division of District of Columbia prior to filing complaint for breach of contract and other claims in civil division did not bar action, where personal representative of testator's estate had actual notice of claims. Richard v. McGreevy, 953 A.2d 1028, 2008 D.C. App. LEXIS 327 (2008).

In administering an estate, a personal representative is obliged to consider all valid claims about which he has actual knowledge, even if creditors fail to comply with the statutory filing formalities. In re Estate of Monge, 841 A.2d 769, 2004 D.C. App. LEXIS 40 (2004).

Claim for unpaid services against the estate of a partner of an architectural firm was not barred for failure to be presented within six months after the personal representative published notice of her appointment, where the claim was asserted by a creditor of the estate and, thus, it was not merely conjectural, and despite personal representative's knowledge that the partnership was "heavily in debt" to creditors, she failed to make a reasonably diligent effort to inquire as to their identity in order to provide actual notice of the probate proceedings, absent showing that such inquiry was impracticable, burdensome or futile; personal representative could have inquired of the remaining partner or sought access to the financial records of the business. In re Estate of Bryant v. Bryant, 793 A.2d 487, 2002 D.C. App. LEXIS 54 (2002).

A claim of which the personal representative had knowledge from the claimant's prior petition for appointment as a personal representative could not be disallowed as untimely filed more than six months after the date of the first publication of notice of the appointment; a formal claim would not have provided the representative with additional information on the claim to recover real estate taxes paid to purchase the property at an invalid tax sale. D.C. Code 1981, §§ 20-903(a), 20-905(c). In re Estate of Barnes, 754 A.2d 284, 2000 D.C. App. LEXIS 110 (2000).

Genuine issues of material fact, as to whether personal representative had actual notice, during six-month statutory period for presenting claims against estate, of District of Columbia's claim against estate, as to whether the District's failure to notify personal representative was inadvertent, and as to whether reasonably diligent personal representative would have failed to uncover the District's claim, precluded summary judgment in the District's action to recover from husband's estate for care and maintenance of wife. D.C. Code 1981, §§ 20-903(a), 20-905, 20-905(a, c). District of Columbia v. Gantt, 558 A.2d 1120, 1989 D.C. App. LEXIS 73 (1989).

If personal representative has actual knowledge of claim during statutory six-month period for filing claim against decedent's estate, personal representative and court may not disallow claim for failure to comply with all formalities of statutes governing claims against the estate. D.C. Code 1981,§§ 20-903(a), 20-905. District of Columbia v. Gantt, 558 A.2d 1120, 1989 D.C. App. LEXIS 73 (1989).

Attorney was entitled to allowance of claim for legal fees from estate for services performed for decedent prior to death, even though attorney had failed to conform claim to formal specifications within six-month limitations period; at least one personal representative had actual notice of claim during statutory six-month period, counsel for estate knew during such period that attorney was making such claim against estate and merits of claim were not disputed. D.C. Code 1981, §§ 20-102, 20-903(a), (a)(1), 20-905, 20-905(a-c). In re Estate of Phillips, 532 A.2d 654, 1987 D.C. App. LEXIS 472 (1987).

Purpose.

A personal representative is required to consider all valid claims against the estate about which she has actual knowledge, because the general purpose of the statutory provisions dealing with creditors' claims against a decedent's estate, particularly when the decedent is

a non-resident of the District of Columbia, is the protection of local creditors of a non-resident decedent having an estate in the District of Columbia, and is intended to provide such local creditors a means of enforcing payment through administration in the District Probate Court. Richard v. McGreevy, 953 A.2d 1028, 2008 D.C. App. LEXIS 327 (2008).

Rights of claimants.

Landlord who filed claim against his former tenant's estate for unpaid rent and damages in the amount of $24,528 was an "interested person" who was entitled to mandatory standard probate, though abbreviated probate proceedings were initiated, where landlord filed his claim within six months of the published notice of appointment. D.C. Code 1981, §§ 20-311, 20-321, 20-322, 20-704, 20-903(a)(1), 20-905. In re Estate of Wilson, 743 A.2d 719, 2000 D.C. App. LEXIS 26 (2000).

Superior court had jurisdiction over claim asserted by decedent's former wife, alleging that decedent breached contract and seeking legal damages from his estate, as a result of decedent's changing beneficiary of his life insurance policy from his former wife, as specified in divorce settlement agreement, to his second wife, where former wife filed action within six months of publication of notice and appointment of personal representative. In re Estate of Howard Equitz, 134 WLR 299 (Super. Ct. 2006).

Statement and verification of claim.

Trial court had discretion to allow attorney's claim for legal fees from estate for services performed for a decedent prior to death, which was filed within six-month limitations period, even though claim did not conform to all formal statutory requirements; claim had not been verified or sent to register of wills or to each personal representative. D.C. Code 1981, §§ 20-102, 20-903(a), (a)(1), 20-905, 20-905(a-c). In re Estate of Phillips, 532 A.2d 654, 1987 D.C. App. LEXIS 472 (1987).

Validity of related law.

Application of Probate Reform Act provisions relating to time for filing suit on claims which were subject of notices of disallowance by decedent's estate did not violate either due process or equal protection rights of claimants; notices were more than sufficient, and legislative classifications served legitimate governmental purpose of expediting settlement of estates. U.S. Const.Amends. 5, 14; D.C. Code 1981, §§ 20-908, 20-908(a). Eastern Indem. Co. v. Content, 543 A.2d 1361, 1988 D.C. App. LEXIS 110 (1988).

§ 20-904. Exempt assets.

Where the decedent was the head of the family or a householder the property exempt under sections 15-501 through 15-503 shall continue to be exempt from all claims against the decedent.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-904.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-901.

§ 20-905. Manner of presentation of claim.

(a) A claimant shall present a claim against a decedent's estate by delivering or mailing, return receipt requested, a written statement of the claim, verified in accordance with section 20-102:

(1) to the personal representative with a copy to the Register; or

(2) to the Register with a copy to the personal representative.

For purposes of presenting a claim within the 6-month time limits provided in section 20-903, a claim shall be deemed presented if inadvertently it is only sent either to the personal representative or to the Register pursuant to this section.

(b) A statement of a claim shall state:

(1) the name and address of the claimant;

(2) the basis of the claim;

(3) the amount claimed;

(4) if the claim is not yet due, when the claim will become due;
(5) if the claim is contingent, the nature of the contingency; and
(6) if the claim is secured, a description of the security.

(c) The Court may, in its discretion, disallow a claim, in whole or in part, if the claimant fails to comply with subsections (a) and (b) or with the personal representative's reasonable requests for additional information.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(fff), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-905.

Emergency legislation. — For temporary amendment of § 4 of D.C. Law 10-241, see § 2 of the Probate Reform Act of 1994 Emergency Amendment Act of 1995 (D.C. Act 11-79, June 28, 1995, 42 DCR 3452).

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-901.

Legislative history of Law 10-241. — Law 10-241, the "Probate Reform Act of 1994," was introduced in Council and assigned Bill No. 10-649, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-386 and transmitted to both Houses of Congress for its review. D.C. Law 10-241 became effective on March 23, 1995.

Editor's notes. — Application of Law 10-241: Section 4 of D.C. Law 10-241, as amended by § 2 of D.C. Law 11-54, provided that the act shall be applicable to estates of decedents who died on or after July 1, 1995.

CASE NOTES

ANALYSIS

Failure to present.
In general.
Knowledge of personal representative of claim.
Rights of presenting claimant.
Sufficiency of presentation.

Failure to present.

Fact that personal representative has constitutional obligation to notify all "known or reasonably ascertainable creditors"—and, a fortiori, all creditors whose actual claims are known—does not necessarily suggest constitutional responsibility to honor all such claims irrespective of creditor's efforts to comply with statutory claims procedures once notified; at least as to creditors who are "known or reasonably ascertainable," but whose precise claims have not been revealed, personal representative has no implied obligation to honor claims that are not timely presented in response to required actual notice. D.C. Code 1981, §§ 20-903(a), 20-905, 20-905(a, c). District of Columbia v. Gantt, 558 A.2d 1120, 1989 D.C. App. LEXIS 73 (1989).

In general.

A "legally authenticated claim" against an executor or administrator of estate is one which has been filed with the register of wills under oath stating basis of the decedent's debt and fact that it has not been paid or that part has been paid and part is still outstanding. D.C. Code § 20-1301 et seq. American Sec. & Trust Co. v. Bindeman, 303 A.2d 188, 1973 D.C. App. LEXIS 261 (1973).

Knowledge of personal representative of claim.

In administering an estate, a personal representative is obliged to consider all valid claims about which he has actual knowledge, even if creditors fail to comply with the statutory filing formalities. In re Estate of Monge, 841 A.2d 769, 2004 D.C. App. LEXIS 40 (2004).

A claim of which the personal representative had knowledge from the claimant's prior petition for appointment as a personal representative could not be disallowed as untimely filed more than six months after the date of the first publication of notice of the appointment; a formal claim would not have provided the representative with additional information on the claim to recover real estate taxes paid to purchase the property at an invalid tax sale. D.C. Code 1981, §§ 20-903(a), 20-905(c). In re Estate of Barnes, 754 A.2d 284, 2000 D.C. App. LEXIS 110 (2000).

Genuine issues of material fact, as to whether personal representative had actual notice, during six-month statutory period for presenting claims against estate, of District of Columbia's claim against estate, as to whether the District's failure to notify personal representative was inadvertent, and as to whether reasonably diligent personal representative would have failed to uncover the District's claim, precluded summary judgment in the

District's action to recover from husband's estate for care and maintenance of wife. D.C. Code 1981, §§ 20-903(a), 20-905, 20-905(a, c). District of Columbia v. Gantt, 558 A.2d 1120, 1989 D.C. App. LEXIS 73 (1989).

If personal representative has actual knowledge of claim during statutory six-month period for filing claim against decedent's estate, personal representative and court may not disallow claim for failure to comply with all formalities of statutes governing claims against the estate. D.C. Code 1981,§§ 20-903(a), 20-905. District of Columbia v. Gantt, 558 A.2d 1120, 1989 D.C. App. LEXIS 73 (1989).

Rights of presenting claimant.

Landlord who filed claim against his former tenant's estate for unpaid rent and damages in the amount of $24,528 was an "interested person" who was entitled to mandatory standard probate, though abbreviated probate proceedings were initiated, where landlord filed his claim within six months of the published notice of appointment. D.C. Code 1981, §§ 20-311, 20-321, 20-322, 20-704, 20-903(a)(1), 20-905. In re Estate of Wilson, 743 A.2d 719, 2000 D.C. App. LEXIS 26 (2000).

Sufficiency of presentation.

Trial court had discretion to allow attorney's claim for legal fees from estate for services performed for a decedent prior to death, which was filed within six-month limitations period, even though claim did not conform to all formal statutory requirements; claim had not been verified or sent to register of wills or to each personal representative. D.C. Code 1981, §§ 20-102, 20-903(a), (a)(1), 20-905, 20-905(a-c). In re Estate of Phillips, 532 A.2d 654, 1987 D.C. App. LEXIS 472 (1987).

Attorney was entitled to allowance of claim for legal fees from estate for services performed for decedent prior to death, even though attorney had failed to conform claim to formal specifications within six-month limitations period; at least one personal representative had actual notice of claim during statutory six-month period, counsel for estate knew during such period that attorney was making such claim against estate and merits of claim were not disputed. D.C. Code 1981, §§ 20-102, 20-903(a), (a)(1), 20-905, 20-905(a-c). In re Estate of Phillips, 532 A.2d 654, 1987 D.C. App. LEXIS 472 (1987).

§ 20-906. Order of payment.

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) Court costs, publication costs, and bond premiums;

(2) Funeral expenses, not exceeding $1,500;

(3) Fiduciary and attorney's fees, not exceeding $1,000;

(4) The homestead allowance pursuant to section 19-101.02 and the family allowance pursuant to section 19-101.04;

(5) Exempt property pursuant to section 19-101.03;

(6) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent;

(7) Claims for rent in arrears for which an attachment might be levied by law;

(8) Judgment and decrees of courts in the District of Columbia; and

(9) All other just claims.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to preference over claims not due.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(ggg), 42 DCR 63; Mar. 24, 1998, D.C. Law 12-81, § 13(e), 45 DCR 745; Apr. 27, 2001, D.C. Law 13-292, § 902, 48 DCR 2087.)

Prior Codifications. — 1981 Ed., § 20-906.

Effect of amendments. — D.C. Law 13-292 rewrote the section which had read:

"(a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

"(1) funeral expenses, not exceeding $1,500;

"(2) family allowance, not exceeding $10,000;

"(3) claims for rent in arrears for which an attachment might be levied by law;

"(4) judgments and decrees of courts in the District of Columbia; and

"(5) all other just claims.

"(b) No preference shall be given in the payment of any claim over any other claim of the same class. No preference shall be given to claims due and payable over claims not yet due."

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-901.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-905.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Legislative history of Law 13-292. — For Law 13-292, see notes following § 20-351.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-905.

For applicability of Law 13-292, see notes following § 20-351.

CASE NOTES

ANALYSIS

Family allowance.
Sufficiency of assets.

Family allowance.

Full family allowance was payable from net proceeds of sale of real property ordered by probate court in order to pay decedent's creditors; Probate Reform Act included decedent's real property in his estate, for family allowance purposes. D.C. Code 1981, §§ 19-101(a), 20-101 et seq. In re Estate of Burton, 541 A.2d 599, 1988 D.C. App. LEXIS 76 (1988).

Sufficiency of assets.

In action against executors for debt or damages, insufficiency of assets is matter of defense to be interposed by executors and supported by such clear proof as would enable court to enter judgment conformable to statute. D.C. Code 1940, § 20-502. Stoner v. National Metropolitan Bank of Washington, 77 F.Supp. 699, 1948 U.S. Dist. LEXIS 2740 (D.D.C1948).

"Assets" for purpose of determining sufficiency of "assets" to discharge just claims of estate means property, real or personal, tangible or intangible, legal or equitable, which can be made available for, or can be appropriated to, the payment of debts. D.C. Code 1940, § 20-502. Stoner v. National Metropolitan Bank of Washington, 77 F.Supp. 699, 1948 U.S. Dist. LEXIS 2740 (D.D.C1948).

Executors sued for debt or damages and making oath under statute as to insufficiency of assets cannot successfully raise such defense by merely raising doubt as to sufficiency of assets or leaving matter vague, but must establish precisely the condition of estate so that court may not know exactly what part of claim should be allowed, and hence oath that "executors cannot determine that they will have sufficient assets to pay all claims" was insufficient. D.C. Code 1940, § 20-502. Stoner v. National Metropolitan Bank of Washington, 77 F.Supp. 699, 1948 U.S. Dist. LEXIS 2740 (D.D.C1948).

§ 20-907. Funeral expenses.

Where an estate is solvent and the will expressly empowers a personal representative to pay funeral expenses in an amount left to the personal representative's discretion, then no allowance from the Court shall be required. In all other cases, the Court may allow, in its discretion, funeral expenses of the decedent in excess of $1,500 according to the condition and circumstances of the decedent, but in no event shall such allowance exceed $5,000. However, the funeral expenses limit for a solvent estate may be waived if the waiver is in writing, signed by all heirs or legatees, and filed with the Register.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(hhh), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-907.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-901.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-905.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-905.

CASE NOTES

In general.

Statutes limiting the amount for funeral expenses to $600 merely provide for a limitation on the amount which may be given priority over claims of other creditors and beneficiaries, and not an invariable maximum that must always be observed, and therefore claim for funeral expenses in amount of $3,863 was properly ordered to be paid pro rata with other general claims lawfully payable out of deceased's estate. D.C. Code 1940, §§ 18-520, 20-502, 20-605. National Metropolitan Bank of Washington v. Joseph Gawler's Sons, 52 A.2d 280, 1947 D.C. App. LEXIS 128 (Cr.App. 1947).

§ 20-908. Action on claims; remedy for failure to act.

(a) For claims presented as provided in section 20-905 within the time limit prescribed by section 20-903, the personal representative shall mail a notice to each claimant stating (1) that the claim has been allowed in a stated amount; (2) that the claim has been disallowed in whole or in part and advising the claimant of the procedures and time limitations for contesting such disallowance; or (3) that the personal representative will petition the Court to determine whether the claim should be allowed. In allowing a claim, the personal representative may deduct any counterclaim that the estate has against the claimant. If the personal representative notifies a claimant of allowance of a claim, the personal representative may rescind the allowance only within 6 months after the date of the first publication of notice of the appointment of a personal representative, but, in such case the personal representative shall notify the claimant of the extent of the recision. If the claim is disallowed in whole or in part, the claim is forever barred to the extent of the disallowance unless the claimant files a verified complaint in the Court, not later than 60 days after the mailing of the notice disallowing the claim.

(b) If no action is taken by the personal representative under subsection (a) of this section, the claimant may file a verified complaint in the Court.

(c) Failure of a personal representative to respond to a presented claim shall in no way suspend the operation of any statute of limitation.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 24, 1998, D.C. Law 12-81, § 13(f), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 20-908.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-901.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 20-906.

CASE NOTES

ANALYSIS

Construction and application.
Equitable remedies.
Knowledge of claim by personal representative.
Validity.

Construction and application.

Fact that personal representative has constitutional obligation to notify all "known or reasonably ascertainable creditors"—and, a fortiori, all creditors whose actual claims are known—does not necessarily suggest constitutional responsibility to honor all such claims irrespective of creditor's efforts to comply with statutory claims procedures once notified; at least as to creditors who are "known or reasonably ascertainable," but whose precise claims have not been revealed, personal representative has no implied obligation to honor claims that are not timely presented in response to required actual notice. D.C. Code 1981, §§ 20-903(a), 20-905, 20-905(a, c). District of Columbia v. Gantt, 558 A.2d 1120, 1989 D.C. App. LEXIS 73 (1989).

Equitable remedies.

Claimants against decedent's estate were not entitled, merely by virtue of interim, respective appointments of receiver and bankruptcy trustee for claimants, to equitable relief from time requirements for filing suit on claims which were subject of notices of disallowance by estate; at the very least, there was constructive notice of the disallowances, and claimants' representatives could and should have acted earlier. D.C. Code 1981, § 20-908. Eastern Indem. Co. v. Content, 543 A.2d 1361, 1988 D.C. App. LEXIS 110 (1988).

Knowledge of claim by personal representative.

Genuine issues of material fact, as to whether personal representative had actual notice, during six-month statutory period for presenting claims against estate, of District of Columbia's claim against estate, as to whether the District's failure to notify personal representative was inadvertent, and as to whether reasonably diligent personal representative would have failed to uncover the District's claim, precluded summary judgment in the District's action to recover from husband's estate for care and maintenance of wife. D.C. Code 1981, §§ 20-903(a), 20-905, 20-905(a, c). District of Columbia v. Gantt, 558 A.2d 1120, 1989 D.C. App. LEXIS 73 (1989).

If personal representative has actual knowledge of claim during statutory six-month period for filing claim against decedent's estate, personal representative and court may not disallow claim for failure to comply with all formalities of statutes governing claims against the estate. D.C. Code 1981,§§ 20-903(a), 20-905. District of Columbia v. Gantt, 558 A.2d 1120, 1989 D.C. App. LEXIS 73 (1989).

Validity.

Application of Probate Reform Act provisions relating to time for filing suit on claims which were subject of notices of disallowance by decedent's estate did not violate either due process or equal protection rights of claimants; notices were more than sufficient, and legislative classifications served legitimate governmental purpose of expediting settlement of estates. U.S. Const.Amends. 5, 14; D.C. Code 1981, §§ 20-908, 20-908(a). Eastern Indem. Co. v. Content, 543 A.2d 1361, 1988 D.C. App. LEXIS 110 (1988).

§ 20-909. Payment of claim.

(a) No later than 8 months from the date of the first publication of notice of the appointment of a personal representative, the personal representative shall, unless the Court extends the time for good cause shown, proceed to pay the claims allowed against the estate in the order of priority prescribed in section 20-906. Any person with a valid unbarred claim or with a valid unbarred judgment who has not been paid within the 8 month period may petition the Court for an order directing the personal representative to pay the claim to the extent that funds of the estate are available for such payment. If the Court extends the time for the personal representative to pay a claim under this subsection, the statutory limit for filing a suit on the claim shall be suspended during the extension of time plus 60 days.

(b) The personal representative may, at any time, pay any just claim which has not been barred, with or without formal presentation, but the personal

representative is personally liable to any other claimant whose claim is allowed and who is injured by such payment if:

(1) the payment was made before the expiration of 6 months from the date of the first publication of notice of the personal representative's appointment and the personal representative failed to require the payee to give adequate security to refund any of the payment necessary to pay other claimants; or

(2) the payment was made due to the negligence or willful fault of the personal representative.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(iii), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-909.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-901.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-905.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-905.

CASE NOTES

ANALYSIS

Failure to make payment or distribution.
In general.

Failure to make payment or distribution.

Residuary legatee may have action for breach of fiduciary duty against personal representative for unnecessary delay in distributing estate assets which, under exoneration doctrine, results in preservation and maintenance expenses for specifically devised property being charged to residuary estate. Lemp v. Keto, 678 A.2d 1010, 1996 D.C. App. LEXIS 118 (1996).

Personal representative's failure to distribute real property to the devisee within nine months after the death of the testatrix was not necessarily unreasonable so as to preclude payment of expenses of the property after that time from the residuary estate. D.C. Code 1981, §§ 20-701(b), 20-704(a), 20-724, 20-909, 20-1102(d). Johnson v. Martin, 567 A.2d 1299, 1989 D.C. App. LEXIS 267 (1989).

In general.

Provision of will which granted plenary powers to personal representative and purportedly made him unaccountable to court conflicted with Probate Code and was thus invalid. D.C. Code 1981, § 20-101 et seq. Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

Court generally enforces exculpatory or immunity clause that relieves personal representative from personal liability for losses resulting from failure to meet required standard of care, unless clause is contrary to statute or public policy, and exculpatory clause that excuses self-dealing or attempts to limit liability for breaches of duty committed in bad faith, intentionally, or with reckless indifference to interest of beneficiary, is generally considered to be against public policy. Godette v. Estate of Cox, 592 A.2d 1028, 1991 D.C. App. LEXIS 170 (1991).

§ 20-910. Meeting of creditors.

A personal representative may convene, on a day designated by the Court, a meeting of all creditors whose claims have been duly presented pursuant to section 20-905. The personal representative shall give written notice to all such creditors of the time, date, place and purpose of the meeting which shall be held not less than 10 days from the date of the notice. The Court shall deny or approve any claim in whole or in part at the meeting. The payment of any

claim as approved by Court order shall hold harmless the personal representative acting in obedience to it, subject to any perfected appeal.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-910.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-901.

§ 20-911. Claim not yet due.

(a) If an unsecured claim which has been proven and which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(b) In other cases, the personal representative or, on petition of the personal representative or the claimant in a special proceeding for that purpose, the Court, may provide for payment of a proven unsecured claim as follows:

(1) if the claimant consents, the claimant may be paid the present value of the claim, taking any uncertainty into account, provided that such present value is determined by arbitration, compromise, or agreement between the claimant and the personal representative; and

(2) arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, creating an escrow account, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

(c) A creditor who holds security for an allowable claim due at some future time may rely on such security under section 20-912 or may file the claim as an unsecured claim not yet due, with the right of withdrawing the claim prior to the taking of any action thereon, and, after such withdrawal, rely on such security rights as provided in section 20-912.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(jjj), 42 DCR 63; Apr. 9, 1997, D.C. Law 11-255, § 19(k), 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 20-911.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-901.
Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-905.
Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 16-909.01.
Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-905.

§ 20-912. Secured claim.

(a) A creditor having a secured claim who surrenders the security shall be paid on the basis of the full amount of the claim.

(b) A creditor having a secured claim who does not surrender the security shall be paid on the basis of one of the following:

(1) the full amount of the claim allowed less the amount realized upon

exhausting the security, if the creditor, during the course of administration, exhausted the security before receiving payment; or

(2) the full amount of the claim allowed, less the value of the security determined by agreement or by the Court, if the creditor did not exhaust, or did not at the time have the right to exhaust, such security.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-912.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-901.

CASE NOTES

In general.

Tax sale purchasers were not required to make claim against taxpayer's estate in order to protect their interest in tax sale property, where redemption period had expired prior to taxpayer's death. D.C. Code 1981, § 20-101 et seq. Irving v. District of Columbia, 665 A.2d 980, 1995 D.C. App. LEXIS 195 (1995), writ of certiorari denied by 516 U.S. 1172, 116 S. Ct. 1264, 134 L. Ed. 2d 212, 1996 U.S. LEXIS 1785, 64 U.S.L.W. 3623 (1996).

Common-law rule of exoneration of mortgage debt on property devised required that, where testatrix devised house to niece "absolutely and in fee simple," the residue had to be drawn on to extinguish the entire amount due and owing under deed of trust, including accrued interest as well as principal on the trust loan. Johnson v. Martin, 567 A.2d 1299, 1989 D.C. App. LEXIS 267 (1989).

Personal representative had statutory authority with respect to specifically devised real estate to pay repair bills, insurance premiums, real estate taxes, water and sewer assessments, and valid claims by utility companies, and to discharge indebtedness secured by deed of trust when he sold the house. D.C. Code 1981, § 20-741. Johnson v. Martin, 567 A.2d 1299, 1989 D.C. App. LEXIS 267 (1989).

§ 20-913. Contingent claim. [Repealed].

Repealed.

(Mar. 21, 1995, D.C. Law 10-241, § 3, 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-913.
Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-905.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-905.

§ 20-914. Execution and levy prohibited.

No execution shall issue upon nor shall any levy be made against any property of the estate under any judgment against a decedent or a personal representative. No claim (which is not by its terms secured) shall attach to any particular estate asset, real or personal, whether in the hands of the personal representative or of any bona fide purchaser, or to the proceeds from the sale of any such asset. The provisions of this section shall not be construed to prevent the enforcement of mortgages, deeds of trust, pledges, liens, or other security interests upon property in an appropriate proceeding.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(lll), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-914.
Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-901.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-905.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-905.

CHAPTER 11. SPECIAL PROVISIONS RELATING TO DISTRIBUTION.

Sec.
20-1101. [Repealed].
20-1102. Distribution in kind; valuation; method.
20-1103. Distribution in kind; assignment, transfer and release of property.
20-1104. Distribution; effect.
20-1105. Petition for purpose of distribution.
20-1106. Distribution to a minor.
20-1107. Distribution to fiduciary for nonresident person under legal disability other than minority.
20-1108. Certain formula clauses to be construed to refer to federal estate and generation-skipping transfer tax rules applicable to estates of decedents dying on December 31, 2009.

§ 20-1101. Renunciation; legatee or heir. [Repealed].

Repealed.

(Mar. 6, 1991, D.C. Law 8-204, § 10, 37 DCR 8439.)

Prior Codifications. — 1981 Ed., § 20-1101.

Legislative history of Law 8-204. — Law 8-204, the "District of Columbia Uniform Disclaimer of Property Interest Act of 1990," was introduced in Council and assigned Bill No. 8-84, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 20, 1990, and December 4, 1990, respectively. Signed by the Mayor on December 14, 1990, it was assigned Act No. 8-279 and transmitted to both Houses of Congress for its review.

Editor's notes. — Uniform Disclaimer of Property Interests: See § 19-1501 et seq.

§ 20-1102. Distribution in kind; valuation; method.

Subject to the terms of any will and the needs of administration, the personal representative shall distribute the assets of a decedent's estate in kind to the extent possible through application of the following provisions:

(a) A specific legatee shall receive distribution of the legacy given to such legatee;

(b) Any family allowance, or legacy payable in money may be satisfied by value in kind provided:

(1) the person entitled to the payment has not demanded payment in cash;

(2) the property distributed in kind is valued at fair market value as of the date of its distribution; and

(3) no residuary legatee has requested that the asset in question remain a part of the residue of the estate.

(c) The residuary estate shall be distributed in kind when there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases, residuary property may be converted into cash for distribution.

(c-1) For the purpose of valuation under subsection (b)(2) of this section, securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known

dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than 30 days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised.

(d) After the probable claims against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any such person to object to the proposed distribution terminates if such person fails to object in writing received by the personal representative within 30 days after mailing or delivery of the proposal.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(mmm), 42 DCR 63.)

Prior Codifications. — 1981 Ed., § 20-1102.

Emergency legislation. — For temporary amendment of § 4 of D.C. Law 10-241, see § 2 of the Probate Reform Act of 1994 Emergency Amendment Act of 1995 (D.C. Act 11-79, June 28, 1995, 42 DCR 3452).

Legislative history of Law 3-72. — Law 3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-241. — Law 10-241, the "Probate Reform Act of 1994," was introduced in Council and assigned Bill No. 10-649, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-386 and transmitted to both Houses of Congress for its review. D.C. Law 10-241 became effective on March 21, 1995.

Editor's notes. — Application of Law 10-241: Section 4 of D.C. Law 10-241, as amended by § 2 of D.C. Law 11-54, provided that the act shall be applicable to estates of decedents who died on or after July 1, 1995.

CASE NOTES

Failure to make payment or distribution. Personal representative's failure to distribute real property to the devisee within nine months after the death of the testatrix was not necessarily unreasonable so as to preclude payment of expenses of the property after that time from the residuary estate. D.C. Code 1981, §§ 20-701(b), 20-704(a), 20-724, 20-909, 20-1102(d). Johnson v. Martin, 567 A.2d 1299, 1989 D.C. App. LEXIS 267 (1989).

§ 20-1103. Distribution in kind; assignment, transfer and release of property.

If distribution in kind is made, the personal representative shall, upon the request of the distributee, execute and deliver an instrument of distribution assigning, transferring, or releasing property to the distributee as evidence of the distributee's title to the property. Distribution of real property may be effected by quit claim deed. The personal representative shall pay all costs of deed recordation as a cost of administration of the estate. In addition to any other indexing, a deed distributed under this section shall be recorded among

the land records as required by law and shall be indexed in the grantor index under the decedent's name.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-1103.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-1102.

CASE NOTES

In general.

Vendors who were intestate heirs of a tenant in common had a duty and the apparent ability to provide marketable title, even though they had entered contract to sell the real property before appointment of personal representative for tenant in common's estate and before distribution of the shares of the two tenants in common who had predeceased them, and, thus, their contract was enforceable; no claim existed that the property was needed to pay debts and claims against the estates, the vendors had a specific and quantifiable future interest, not just a bare expectancy, the contract required the vendors to take the legal steps necessary to perfect title, and they could do so through the probate process. Douglas v. Lyles, 841 A.2d 1, 2004 D.C. App. LEXIS 6 (2004).

§ 20-1104. Distribution; effect.

(a) *Title of distributees.* — Proof that a distributee has received an instrument or deed of distribution of assets in kind from the personal representative is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all interested persons, except that the personal representative shall recover the assets or their value if the distribution was improper in accordance with subsection (b) of this section.

(b) *Improper distribution; liability of distributee.* — A distributee of property improperly distributed who has not disposed of the property shall return the property received to the personal representative unless the distribution can no longer be questioned because of adjudication or limitations. If a distributee has disposed of any property improperly distributed, such distributee shall be liable to the personal representative for the value of the property on the date of distribution or the date of disposition, whichever is lower, unless the distribution can no longer be questioned because of adjudication or limitations.

(c) *Purchasers from distributees protected.* — If property distributed in kind or a security interest therein is acquired for value by a purchaser from, or lender to, a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from, or lender to, a transferee from such distributee, the purchaser or lender takes good title free of any claims or rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from, or lender to, a distributee (or a distributee's transferee) even when the distributee, who, as personal representative, has executed such deed of distribution. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether

the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section on which a state documentary fee is noted shall be prima facie evidence that such transfer was made for value.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(nnn), 42 DCR 63; Mar. 24, 1998, D.C. Law 12-81, § 13(g), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 20-1104.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-1102.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-1102.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-1102.

CASE NOTES

Analysis

Payment in error.
Rights and liabilities of purchasers from distributees.

Payment in error.

The trial court properly granted successor personal representative's request that the first cousins once removed from decedent, who died intestate, be made to return the money distributed to themselves to the estate, where decedent's first cousin was the rightful heir. D.C. Code 1981, § 20-1104(a). In re Estate of Derricotte, 744 A.2d 535, 2000 D.C. App. LEXIS 11 (2000).

Rights and liabilities of purchasers from distributees.

Successor personal representative for decedent's estate in District of Columbia could not recover from bankruptcy trustee of former personal representative who conveyed house in decedent's estate to herself individually as decedent's heir that improperly distributed house; District of Columbia statute provides for recovery of improperly distributed estate property, but purchaser for value from distributee takes good title free of any claims of estate, and bankruptcy trustee as hypothetical bona fide purchaser accordingly took free of any right to recover on behalf of decedent's estate. Bankr.Code, 11 U.S.C. § 544(a)(3); D.C. Code 1981, § 20-1104. In re Dockery, 116 B.R. 1, 1990 Bankr. LEXIS 1406 (1990).

Lender who takes interest in real property for value from distributee with title, without notice of competing claim, is protected under statute providing that purchaser for value from distributee with title takes title free of claims of estate. D.C. Code 1981, § 20-1104(c) (1994). Associates Fin. Servs. of Am. v. District of Columbia, 689 A.2d 1217, 1997 D.C. App. LEXIS 24 (1997).

Lender that acquired, without notice of competing claim, deed of trust interest in property that borrower-husband had transferred to himself from deceased mother's estate, in his capacities as personal representative of mother's estate and as her sole heir, was protected from claims against mother's estate under statute in effect when lender filed deed of trust, which provided that purchaser for value from distributee with title took title free of claims of estate; therefore, lender had no obligation to satisfy any debt that estate owed to the District of Columbia for Medicaid payments that had been made on mother's behalf. D.C. Code 1981, § 20-1104(c) (1994). Associates Fin. Servs. of Am. v. District of Columbia, 689 A.2d 1217, 1997 D.C. App. LEXIS 24 (1997).

§ 20-1105. Petition for purpose of distribution.

When two or more heirs or legatees are entitled to distribution of undivided interests in any property of the estate, the personal representative or one or

more of the heirs or legatees may petition the Court, prior to the closing of the estate, to make partition. After notice to the heirs or legatees interested in the property being partitioned, the Court may partition the property, in accordance with the provisions of sections 16-2901 through 16-2925. The Court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-1105.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-1102.

§ 20-1106. Distribution to a minor.

(a) If a personal representative is required to distribute assets of an estate to a minor, and if the will contains a direction or grants discretion to the personal representative with regard to the manner of making such a distribution, then the personal representative shall make distribution in accordance with that direction or discretion without the need for any order of the Court.

(b) If a personal representative is required to distribute assets of an estate to a minor, and if there is no will or if the will does not give any direction or discretion to the personal representative with regard to such a distribution, then the personal representative may make such distribution as follows:

(1) without the need for any order of the Court, in the following order of priority:

(A) to the guardian of the minor if the guardian has filed with the Court a copy of the guardian's appointment as guardian and an order authorizing such guardian to receive such distribution authenticated pursuant to 28 U.S.C. § 1738; or

(B) to the custodian selected or approved by the personal representative for the minor under the Uniform Gifts (or Transfers) to Minors Act of any jurisdiction, subject to the limits, if any, under such applicable act on the property which may be received and held by such custodian; or

(2) in any other manner approved by the Court.

(c) When a personal representative distributes assets in accordance with this section, the personal representative shall obtain a voucher, signed by the distributee, indicating receipt of the property distributed.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 12, 1986, D.C. Law 6-87, § 3(b), 33 DCR 278; Mar. 21, 1995, D.C. Law 10-241, § 3(ooo), 42 DCR 63.)

Cross references. — Transfer to minor authorized by will or trust, see § 21-305.

Prior Codifications. — 1981 Ed., § 20-1106.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-1102.

Legislative history of Law 6-87. — Law 6-87, the "District of Columbia Uniform Transfers to Minors Act," was introduced in Council and assigned Bill No. 6-58, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 19, 1985, and December 3, 1985, respec-

tively. Signed by the Mayor on December 30, 1985, it was assigned Act No. 6-115 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-1102.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-1102.

§ 20-1107. Distribution to fiduciary for nonresident person under legal disability other than minority.

If a fiduciary has been appointed for a nonresident person under a legal disability other than minority and if such fiduciary has filed copies of such appointment and an order authorizing such fiduciary to receive such distribution authenticated pursuant to 28 U.S.C. sec. 1738, the personal representative may distribute the share of an estate of the person with a disability to such fiduciary.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Apr. 24, 2007, D.C. Law 16-305, § 34(c), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 20-1107.

Effect of amendments. — D.C. Law 16-305 substituted "share of an estate of the person with a disability" for "disabled person's share of an estate".

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-1102.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 20-108.

§ 20-1108. Certain formula clauses to be construed to refer to federal estate and generation-skipping transfer tax rules applicable to estates of decedents dying on December 31, 2009.

(a)(1) A will or trust of a decedent who dies after December 31, 2009 and before January 1, 2011, that contains a formula referring to the "unified credit," "estate tax exemption," "applicable exemption amount," "applicable credit amount," "applicable exclusion amount," "generation-skipping transfer tax exemption," "GST exemption," "marital deduction," "maximum marital deduction," or "unlimited marital deduction," or that measures a share of an estate or trust based on the amount that can pass free of Federal estate taxes or the amount that can pass free of Federal generation-skipping transfer taxes, or that is otherwise based on a similar provision of Federal estate tax or generation-skipping transfer tax law, shall be deemed to refer to the Federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009.

(2) This subsection shall not apply with respect to a will or trust that is executed or amended after December 31, 2009, or that manifests an intent that a contrary rule shall apply if the decedent dies on a date on which there is no then-applicable Federal estate or generation-skipping transfer tax.

(3) The reference to January 1, 2011 in this subsection shall, if the Federal estate and generation-skipping transfer tax becomes effective before

that date, refer instead to the first date on which the tax shall become legally effective.

(b) The personal representative or any affected beneficiary under the will or other instrument may bring a proceeding to determine whether the decedent intended that the references under subsection (a) of this section be construed with respect to the law as it existed after December 31, 2009. The proceeding shall be commenced within 12 months following the death of the testator or grantor, and not thereafter.

(Sept. 24, 2010, D.C. Law 18-223, § 7102(b), 57 DCR 6242.)

Emergency legislation. — For temporary (90 day) addition, see §§ 7102(b) and 7103 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Short title. — Short title: Section 7101 of D.C. Law 18-223 provided that subtitle K of title VII of the act may be cited as the "Estate Tax Clarification Act of 2010".

Editor's notes. — Section 7103 of D.C. Law 18-223 provided: "Sec. 7103. Applicability date. Section 7102 shall apply as of January 1, 2010."

Chapter 13. Closing the Estate.

Sec.
20-1301. Termination of appointment.
20-1302. Liability of heir or legatee to creditor.
20-1303. Limitations.
20-1304. Subsequent administration.
20-1305. Confirmatory acts.

§ 20-1301. Termination of appointment.

(a) *Supervised administration.* — The approval of the final account shall automatically close the estate, and if the final account so requests and the Court approves, shall terminate the appointment of the personal representative. If the appointment is not terminated by the final account, a supervised personal representative may later petition the Court for an order terminating the appointment. The personal representative shall mail or deliver notice of such petition to all residuary legatees, if the decedent died testate, or heirs, if the decedent died intestate, and to any creditors who have presented their claims but not been paid in full. The Court may hold a hearing on the petition if any person receiving notice files, within 20 days of the mailing of such notice, a written request for a hearing with the Court. After a hearing or, if no hearing is requested, after the expiration of the 20 days, the Court may enter an order terminating the appointment of the personal representative.

(b) *Unsupervised administration; closing the estate.* — Unless otherwise provided by an order of the Court for good cause shown in a particular case, an estate administered in an unsupervised administration shall be closed in one of 2 ways: (A) by the personal representative's filing with the Court a Certificate of Completion as described in section 20-735, and the appointment of the personal representative shall thereby be terminated if so elected by the personal representative in the Certificate of Completion; or (B) if no Certificate of Completion is filed, then by the termination of the appointment of the personal representative as provided in subsection (c) of this section.

(c) *Unsupervised administration; automatic termination of appointment.* — If no Certificate of Completion is filed by a personal representative in an unsupervised administration, then the appointment of the personal representative shall terminate automatically on the date which is 3 years after the appointment of the personal representative, or on the later expiration of any extension of the appointment granted by the Court. Specifically, the Court shall extend the appointment for an additional 12 months upon the written request of the personal representative; there shall be no limit on the number of extensions granted.

(d) Neither the closing of the estate nor the termination of the personal representative's appointment shall prohibit the personal representative from thereafter performing whatever final administrative actions may be necessary to complete the affairs of the estate.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(ppp), 42 DCR 63; Apr. 9, 1997, D.C. Law 11-255, § 19(l), 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 20-1301.

Emergency legislation. — For temporary amendment of § 4 of D.C. Law 10-241, see § 2 of the Probate Reform Act of 1994 Emergency Amendment Act of 1995 (D.C. Act 11-79, June 28, 1995, 42 DCR 3452).

Legislative history of Law 3-72. — Law 3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980, and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-241. — Law 10-241, the "Probate Reform Act of 1994," was introduced in Council and assigned Bill No. 10-649, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-386 and transmitted to both Houses of Congress for its review. D.C. Law 10-241 became effective on March 21, 1995.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Editor's notes. — Application of Law 10-241: Section 4 of D.C. Law 10-241, as amended by § 2 of D.C. Law 11-54, provided that the act shall be applicable to estates of decedents who died on or after July 1, 1995.

CASE NOTES

Pending litigation.

Appeal of estate of corporation's sole shareholder would not be dismissed on the basis that the appointment of the estate's personal representative had expired, in action by estate seeking to seek aside foreclosure sales on deeds of trust on real estate held in corporation's name, where the authority of the personal representative had been reinstated by the superior court before the estate noted its appeal, defendants were not entitled to service of the petition to restore the personal representative to office, and defendants did not challenge the validity of the personal representative's appointment in the trial court in the probate proceeding. Estate of Raleigh v. Mitchell, 947 A.2d 464, 2008 D.C. App. LEXIS 232 (2008).

§ 20-1302. Liability of heir or legatee to creditor.

After an estate has been closed, a claim not barred may be brought against one or more of the persons to whom property has been distributed. An heir or legatee shall not be liable to claimants for any amount in excess of the value of the property distributed to such heir or legatee, valued at the time of distribution or the time of filing suit, whichever is lower. An heir or legatee shall have a right of contribution against other heirs or legatees and, as between them, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied before distribution.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Cross references. — Claim not paid in normal course of administration, rights of recovery from distributee, see § 20-901.

Prior Codifications. — 1981 Ed., § 20-1302.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-1301.

§ 20-1303. Limitations.

(a) *Proceedings against personal representative.* — Unless otherwise barred, any claim of personal liability against a personal representative, except for

fraud, and except as provided in section 20-736, shall be barred one year from the date of distribution of all the assets and satisfaction of all known claims against the estate. Unless shown by the personal representative to be earlier, the date of such distribution and satisfaction in an unsupervised administration shall be deemed to be the date of the filing of the Certificate of Completion or, if none, 3 months after the termination of the appointment of the personal representative.

(b)(1) *Claims against heirs and legatees.* — Except as otherwise provided in section 20-1302, the right of any person seeking to recover improperly distributed property or its value from any person to whom property has been distributed shall be barred one year from the date of distribution of all the assets of the estate and satisfaction of all known claims against the estate.

(2) Where an action or proceeding is commenced against the personal representative within the time prescribed in subsection (a) of this section, the right of the personal representative to seek recovery pursuant to paragraph (1) of this subsection shall not be barred earlier than 3 months following the commencement of the action or proceeding.

(3) Nothing in this subsection shall bar the recovery of property or its value that was received as the result of the distributee's participation in a fraudulent distribution.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; Mar. 21, 1995, D.C. Law 10-241, § 3(qqq), 42 DCR 63; Mar. 24, 1998, D.C. Law 12-81, § 13(h), 45 DCR 745.)

Cross references. — Claim not paid in normal course of administration, rights of recovery from distributee, see § 20-901.

Prior Codifications. — 1981 Ed., § 20-1303.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-1301.

Legislative history of Law 10-241. — For legislative history of D.C. Law 10-241, see Historical and Statutory Notes following § 20-1301.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Editor's notes. — Application of Law 10-241: See Application of Law 10-241 and Emergency act amendment notes to § 20-1301.

CASE NOTES

In general.

Personal representative of estate of decedent's business associate was subject to suit by trustee of decedent's living trust seeking to enforce assignment of leasehold, in her personal capacity and as co-personal representative of business associate's estate under District of Columbia law, despite representative's contention that estate was closed; if property remained in estate, representative and bank had ability to exercise control over property as co-personal representatives, and if interest remained under representative's personal control she would owe trust fiduciary interest as successor-in-interest. Bell v. Rotwein, 535 F.Supp.2d 137, 2008 U.S. Dist. LEXIS 16305 (2008).

One-year statute of limitations governing claims of personal liability against a personal representative, rather than six-month statute of limitations governing creditors' claims against an estate, applied in probate proceedings to decedent's first cousin's cross-claim against first cousins once removed, in which first cousin requested an accounting, revocation of the letters of administration issued to first cousins once removed, and an order barring further transactions by them and requiring the

return of all money and property they distributed. D.C. Code 1981, §§ 20-903, 20-1303. In re Estate of Derricotte, 744 A.2d 535, 2000 D.C. App. LEXIS 11 (2000).

§ 20-1304. Subsequent administration.

If property is discovered after an estate has been closed and the appointment of the personal representative has been terminated pursuant to section 20-1301, the Court, upon petition of any interested person and upon such notice as it may direct, may appoint the same or a successor personal representative and make any other appropriate order. Any further proceedings shall be conducted pursuant to the applicable provisions of this title but no claim previously barred may be asserted in the subsequent administration.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-1304.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-1301.

§ 20-1305. Confirmatory acts.

Nothing in this title shall be deemed to affect the authority of a personal representative to perform ministerial or confirmatory acts after an estate is closed or the appointment of the personal representative is terminated.

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 20-1305.

Legislative history of Law 3-72. — For legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 20-1301.

TITLE 21. FIDUCIARY RELATIONS AND PERSONS WITH MENTAL ILLNESS.

Chapter
1. Guardianship of Infants.
3. Transfers to Minors; Uniform Law.
5. Hospitalization of Persons with Mental Illness.
7. Property of Mentally Ill Persons. [Repealed].
9. Persons with Mental Illness Found in Certain Federal Reservations.
11. Commitment and Maintenance of Persons with Moderate Intellectual Disabilities.
12. Use of Trained Employees to Administer Medication to Persons with Intellectual Disabilities or other Disabilities.
13. Alcoholics and Drug Addicts. [Repealed].
15. Conservators [Repealed].
17. General Fiduciary Relations.
18. Charitable and Split-Interest Trusts.
19. Estates of Absentees and Absconders [Repealed].
20. Guardianship, Protective Proceedings, and Durable Power of Attorney.
21. Uniform General Power of Attorney.
22. Health-Care Decisions.
23. Custodial Power of Attorney.
24. Adult Guardianship and Protective Proceedings Jurisdiction; Uniform Act.

Chapter 1. Guardianship of Infants.

Subchapter I. Appointment of Guardian; Bond

Sec.
21-101. Natural guardians of the person.
21-102. Testamentary guardians of the person.
21-103. Appointment of guardians of the person by court; limitation of number of wards.
21-104. Termination of guardianship of the person.
21-105. Appointment by deed or will for child inheriting from parent.
21-106. Guardian of estate.
21-107. Preferences in appointment of guardian of estate.
21-108. Selection of guardian by infant.
21-109. Spouse as guardian of estate.
21-110. Service on nonresident guardian; failure to give power of attorney.
21-111. Ancillary guardian of estate of nonresident infant.
21-112. Suits by ancillary guardian.
21-113. Enjoining spouse, parent, or testamentary guardian from interfering with minor's estate.
21-114. Bond from parents of child entitled to property.
Sec.
21-115. Bond of guardian of estate.
21-116. One bond for several wards.
21-117. Additional bond.
21-118. Counter security; petition by surety.
21-119. Allowances made before bond given.
21-120. Settlement of actions involving minor children; appointment of guardian of estate.

Subchapter II. Property of Infants

21-141. Possession of property.
21-142. Inventory.
21-143. Duties; accounts; maintenance and education; sales; compensation.
21-144. Property subject to liens.
21-145. Property subject to executory contract.
21-146. Contract for sale by adult in behalf of himself and infant.
21-147. Sale of infant's principal for maintenance or education.
21-148. Sale or exchange of real estate; proceedings.
21-149. Parties.
21-150. Proof.
21-151. Decree of sale; costs.
21-152. Terms of sale; lien.

Sec.
21-153. Exchanges; appointment of trustees.
21-154. Ratification of sales by court.
21-155. Sale or exchange of particular estate or remainder; application of income.
21-156. Lease of infant's estate.
21-157. Mortgage of infant's estate.
21-158. Final account.

Subchapter III. Indigent Boys

21-181. Enlistment of indigent minor children.
21-182. Preparation of guardianship papers.

Subchapter I. Appointment of Guardian; Bond.

§ 21-101. Natural guardians of the person.

(a) The father and mother are the natural guardians of the person of their minor children. When either dies or is incapable of acting, the natural guardianship of the person devolves upon the other.

(b) This section does not affect the power of a court of competent jurisdiction to appoint another person guardian of the children when it appears to the court that the welfare of the children requires it.

(Sept. 14, 1965, 79 Stat. 737, Pub. L. 89-183, § 1.)

Cross references. — Adoption, see § 16-301 et seq.

Infant owners of condemned buildings, appointment of guardian, see § 6-909.

Life estate and contingency remainder sale, guardian ad litem, see § 42-1402.

Nonresident infants, appointment of ancillary guardian, see §§ 21-111, 21-112.

Trust companies, authority to act as guardian, see § 26-1309 et seq.

Prior Codifications. — 1981 Ed., § 21-101. 1973 Ed., § 21-101.

Editor's notes. — Section 33(a) of D.C. Law 15-354, as amended by section 48(a) of D.C. Law 16-191, provided that Title 21 is designated Title 21 of the District of Columbia Official Code.

CASE NOTES

Analysis

Adopted children.
Children-out-of-wedlock.
Conflictive interests of appointed guardian.
Construction and application.
Divorced parents.
Jurisdiction.
Medical treatment.
Presumptions and burden of proof.
Public policy.
Rights of nonparents.
Testamentary provisions.

Adopted children.

Adoptive father was entitled, in action by biological parents of children to recover custody, to same legal presumption of custody enjoyed by all other natural parents, including provision that upon death of one parent natural guardianship devolved upon the other. D.C. Code 1981, § 21-101(a). A.J. v. L.O., 697 A.2d 1189, 1997 D.C. App. LEXIS 116 (1997).

Children-out-of-wedlock.

In habeas corpus proceeding brought by illegitimate child's mother who sought control and custody of child who was in control of nonparent, awarding of custody of child to mother was not an abuse of discretion, where mother had made persistent efforts to obtain child and evidence indicated that she was a presently fit mother. D.C. Code 1951, §§ 16-202, 16-808, 21-101. Bell v. Leonard, 251 F.2d 890, 1958 U.S. App. LEXIS 3627 (C.A.D.C. 1958).

A mother is the natural guardian of her child, even though the child be illegitimate, and as mother and natural guardian she has right to writ of habeas corpus directed to any person unlawfully detaining her minor child to end that child be produced before court which shall determine which of parties is entitled to custody of child. D.C. Code 1951, § 16-808. Bell v. Leonard, 251 F.2d 890, 1958 U.S. App. LEXIS 3627 (C.A.D.C. 1958).

Evidence supported finding that both father of child out-of-wedlock and maternal grandmother were fit and capable of caring for minor child and because record did not contain clear and convincing evidence that remaining in her

father's custody would be against child's best interests, statutory presumption tipped the balance in favor of placing custody of child with father. D.C. Code 1981, § 21-101(a, b). Shelton v. Bradley, 526 A.2d 579, 1987 D.C. App. LEXIS 363 (1987).

Conflictive interests of appointed guardian.

New counsel should have been appointed to represent child in adoption proceeding, where guardian ad litem, who had been appointed as advocate for child, was called as witness for one of the opposing parties. D.C. Code 1981, §§ 16-309, 16-309(b)(3), 16-918(b), 16-2304(b)(1); Rules of Prof.Conduct, Rule 3.7. S.S. v. D.M., 597 A.2d 870, 1991 D.C. App. LEXIS 272 (1991).

Construction and application.

Whenever our statutes use the term "guardian," the father, although in one sense the natural guardian, is never to be included, unless there be something more which imperatively demands that it should be embraced by the expression. Barney v. De Kraft, 30 F.Cas. 961, 1862 U.S. App. LEXIS 590 (1862).

The child's mother having died, father was its only natural guardian and custodian, and was entitled to custody and control unless it was alleged and established that he was unfit, and that welfare of child required its removal from such custody, and in absence of charge of unfitness, a grandparent is a "third person" without legal standing to demand custody. Municipal Court Rules, § 5 rule 5. Jackson v. Fitzgerald, 185 A.2d 724, 1962 D.C. App. LEXIS 402 (Cr.App. 1962).

Subsection (a) deals with guardianship and financial matters, and not child custody in the domestic relations area of the law. Moorehead v. Moorehead, 118 WLR 637 (Super. Ct. 1990).

Divorced parents.

When divorced wife, to whom custody of child of marriage had been awarded in divorce proceeding, died, divorced husband became natural guardian of his son. Code 1950, §§ 20-108, 31-1. Judd v. Van Horn, 81 S.E.2d 432, 1954 Va. LEXIS 176 (1954).

Jurisdiction.

Jurisdiction over guardianship matters is given to United States District Court holding Probate Court, while Domestic Relations jurisdiction is vested in Domestic Relations Branch of the Municipal Court. D.C. Code 1951, §§ 11-758 et seq., 21-101 et seq. Johnson v. Austin, 162 A.2d 495, 1960 D.C. App. LEXIS 221 (Cr.App. 1960).

Medical treatment.

Courts may authorize blood transfusions for infant minors over the religious objections of their parents who are Jehovah's Witnesses. In re B.B.H., 111 WLR 1929 (Super. Ct. 1988).

Presumptions and burden of proof.

Fundamental presumption is that children and their natural parents should remain together. D.C. Code 1981, § 21-101(a). In re D.G., 583 A.2d 160, 1990 D.C. App. LEXIS 295 (1990).

Strong statutory presumption that, upon death of one parent, surviving parent will have custody of any minor children can be rebutted only by clear and convincing evidence of abandonment, unfitness, or other circumstances which render parent's custody detrimental to best interests of child. D.C. Code 1981, § 21-101(a, b). Shelton v. Bradley, 526 A.2d 579, 1987 D.C. App. LEXIS 363 (1987).

Public policy.

In proceedings involving custody of child, paramount concern is child's welfare and all the considerations, including rights of parent to child, must yield to its best interest and well-being, but application of that broad principle does not demand that right of a parent be ignored. D.C. Code 1951, § 21-101. Davis v. Jurney, 145 A.2d 846, 1958 D.C. App. LEXIS 289 (Cr.App. 1958).

Rights of nonparents.

Grandmother's claim that court should have appointed her as guardian for all eight of her grandchildren following the mother's death and not for only seven of them was mooted by the consent of the father of the eighth child to the grandmother's appointment as guardian for the person of his son and the probate court's willingness to now consider the matter. In re Guardianship of J.L.N., 557 A.2d 1313, 1989 D.C. App. LEXIS 78 (1989).

Testamentary provisions.

The will of the maternal grandfather, which declares that his estate should be held by trustees, in trust for his daughter and heirs, free from the control or disposal of any husband she might have, and exempt from his debts, contracts, or engagements, does not affect the right of the husband to the guardianship of his infant children. Barney v. De Kraft, 30 F.Cas. 961, 1862 U.S. App. LEXIS 590 (1862).

§ 21-102. Testamentary guardians of the person.

When one parent is dead, the other, whether of full age or not, may, by last will and testament, appoint a guardian of the person to have the care, custody,

and tuition of his infant child, other than a married infant; and if the person so appointed refuses the trust, the Probate Court may appoint another person in his place.

(Sept. 14, 1965, 79 Stat. 737, Pub. L. 89-183, § 1; Oct. 1, 1976, D.C. Law 1-87, § 27, 23 DCR 2544.)

Cross references. — Abuse of adults, duty to report, see § 7-1903.

Prior Codifications. — 1981 Ed., § 21-102. 1973 Ed., § 21-102.

Legislative history of Law 1-87. — Law 1-87, the "Anti-Sex Discriminatory Language Act," was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976, and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

§ 21-103. Appointment of guardians of the person by court; limitation of number of wards.

(a) When an infant has neither a natural nor testamentary guardian, a guardian of the person may be appointed by the Probate Court in its own discretion or on the application of a next friend of the infant.

(b) Only trust companies may act as guardian of the person for more than five infants at one time, unless the infants are members of one family.

(Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1.)

Cross references. — Abuse of adults, duty to report, see § 7-1903.

Probate Court, jurisdiction, pleadings and practice, see §§ 11-921, 16-3101 et seq.

Prior Codifications. — 1981 Ed., § 21-103. 1973 Ed., § 21-103.

CASE NOTES

Jurisdiction of district court.

The United States District Court holding Probate Court has jurisdiction to grant custody of minors in guardianship cases. D.C. Code 1951, §§ 11-512, 11-516, 16-808, 21-103. Johnson v. Austin, 162 A.2d 495, 1960 D.C. App. LEXIS 221 (Cr.App. 1960).

Where United States District Court holding Probate Court once assumed jurisdiction over parties to proceedings involving guardianship of child, that jurisdiction continued for all purposes, and if either party felt aggrieved by the orders of the court his remedy lay with that court or on appeal therefrom. D.C. Code 1951, §§ 11-512, 11-516, 16-808, 21-103. Johnson v. Austin, 162 A.2d 495, 1960 D.C. App. LEXIS 221 (Cr.App. 1960).

§ 21-104. Termination of guardianship of the person.

A natural guardianship or an appointive guardianship of the person of an infant ceases when said infant becomes 18 years of age or marries.

(Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1; July 22, 1976, D.C. Law 1-75, § 4(d), 23 DCR 1181; Apr. 7, 1977, D.C. Law 1-107, title I, § 115, 23 DCR 8737.)

Prior Codifications. — 1981 Ed., § 21-104. 1973 Ed., § 21-104.

Legislative history of Law 1-75. — Law 1-75, the "District of Columbia Age of Majority Act," was introduced in Council and assigned Bill No. 1-252, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second

readings on April 6, 1976, and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and transmitted to both Houses of Congress for its review.

Legislative history of Law 1-107. — Law 1-107, the "Marriage and Divorce Act," was introduced in Council and assigned Bill No. 1-89, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on amended first readings on July 27, 1976, and September 15, 1976, and second readings on November 22, 1976, and December 7, 1976. Signed by the Mayor on January 4, 1977, it was assigned Act No. 1-193 and transmitted to both Houses of Congress for its review.

CASE NOTES

Persons for whom guardians may be appointed.

Under law of District of Columbia, 18-year-old petitioner alone had power over her person and was entitled to consent for herself to any form of medical treatment; thus, her application for appointment of a special guardian, after receiving information from hospital that it would not permit use of its facilities to perform scheduled therapeutic abortion unless it received written consent of a parent or guardian or a court order of similar legal effect, would be denied. D.C. Code § 21-104. In re Guardianship of Boe, 322 F. Supp. 872, 1971 U.S. Dist. LEXIS 14764 (1971).

§ 21-105. Appointment by deed or will for child inheriting from parent.

(a) In case of the death of either parent from whom his or her minor children inherit or take by devise or bequest, the parent may by deed or last will and testament appoint a guardian of the property of the children, subject to the approval of the proper court of the District of Columbia.

(b) This section does not limit or affect the power of a court of competent jurisdiction to appoint another person guardian of the children when it appears to the court that the welfare of the children requires it.

(Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-105. 1973 Ed., § 21-105.

§ 21-106. Guardian of estate.

(a) Subject to sections 21-101 to 21-104, when land descends or is devised to an infant under 18 years of age, or the infant is entitled to a distributive share of the personal estate of an intestate or to a legacy or bequest under a last will, or acquires real or personal property by gift or purchase, the Probate Court may appoint a guardian of the infant's estate; and if there is a guardian of the person of the infant the guardian of the estate so appointed may be the same or a different person.

(b) The appointment may be made at any time after the probate of the will or the grant of administration when the infant is entitled as a devisee, legatee, or next of kin.

(c) Only trust companies may act as guardian of the estate of more than five infants at one time, unless the infants are entitled to shares of the same estate.

(Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1; July 22, 1976, D.C. Law 1-75, § 4(e), 23 DCR 1181.)

Prior Codifications. — 1981 Ed., § 21-106. 1973 Ed., § 21-106.
Legislative history of Law 1-75. — For legislative history of D.C. Law 1-75, see Historical and Statutory Notes following § 21-104.

§ 21-107. Preferences in appointment of guardian of estate.

In appointing a guardian of the estate of an infant, unless said infant be over 14 years of age as hereinafter directed in section 21-108, the court shall give preference to —

(1) the parents, or either of them, if living; or

(2) the spouse if the infant is married to a person 18 years of age or older —

when in the judgment of the court the parent or spouse is a suitable person to have the management of the infant's estate.

(Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1; Oct. 1, 1976, D.C. Law 1-87, § 28, 23 DCR 2544.)

Prior Codifications. — 1981 Ed., § 21-107. 1973 Ed., § 21-107.
Legislative history of Law 1-87. — For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 21-102.

§ 21-108. Selection of guardian by infant.

(a) When a guardian, either of the person or the estate, of an infant is appointed, the infant shall, if practicable, be brought before the court, and, if over 14 years of age, shall be entitled to select and nominate his or her guardian.

(b) When a guardian has been appointed before the infant has attained the age of 14 years, the infant, upon arriving at that age, may select a new guardian, notwithstanding the appointment before made.

(c) The court shall pass upon the character and competency of the guardian selected by the infant, and the guardian shall be:

(1) required to give bond as in other cases;

(2) subject to the control of the court; and

(3) under the same obligations and discharge the same duties — as if selected by the court.

(d) When, after a guardian of the estate has been appointed, the infant selects a new guardian upon arriving at the age of 14 years, and the new selection is approved by the court, and the person selected is duly appointed and qualified, the guardian previously appointed shall settle his final account and turn over his ward's estate to the newly appointed guardian.

(Sept. 14, 1965, 79 Stat. 738, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-108. 1973 Ed., § 21-108.

§ 21-109. Spouse as guardian of estate.

When an infant to whom a guardian of his or her estate has been appointed

marries, he or she may select his or her spouse as the guardian of his or her estate, with the approval of the court; and after he is duly appointed and qualified by giving bond, as is required in other cases, the powers of the guardian previously appointed shall cease, and he shall settle his final account and turn over his ward's estate to his or her spouse, according to the order and directions of the court.

(Sept. 14, 1965, 79 Stat. 739, Pub. L. 89-183, § 1; Oct. 1, 1976, D.C. Law 1-87, § 29(a), 23 DCR 2544.)

Prior Codifications. — 1981 Ed., § 21-109. 1973 Ed., § 21-109.

Legislative history of Law 1-87. — For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 21-102.

§ 21-110. Service on nonresident guardian; failure to give power of attorney.

Before original or ancillary letters of guardianship are issued, the person designated, if a nonresident of the District of Columbia, shall file in the office of the Register of Wills an irrevocable power of attorney designating the Register of Wills and his successors in office as the person upon whom all notices and process issued by a competent court in the District may be served, with like effect as personal service, in relation to all suits, matters, causes, or things affecting or pertaining to the estate in which the letters are to be issued. The Register of Wills shall forthwith forward by registered or certified mail to the address of the guardian, which shall be stated in the power of attorney, all notices or process served upon the Register under this section.

If the person fails to file the power of attorney within 10 days after the entry of the order of appointment, the order shall stand revoked, and he shall forfeit all rights to the office.

(Sept. 14, 1965, 79 Stat. 739, Pub. L. 89-183, § 1.)

Cross references. — Trust company fiduciaries, bonding, see §§ 26-1333 and 26-1334.

Prior Codifications. — 1981 Ed., § 21-110. 1973 Ed., § 21-110.

§ 21-111. Ancillary guardian of estate of nonresident infant.

When an infant residing outside the District of Columbia is entitled to property or to maintain an action in the District of Columbia, a general guardian or committee of his estate, appointed by a court of competent jurisdiction in the State or territory where the infant resides, or a person at the request of the guardian or committee, may petition the court for ancillary letters as guardian or committee. The petition shall be under oath, accompanied by certified copies of as much of the record and proceedings as shows the appointment of the guardian or committee and that he has given a sufficient bond to account for all property and money that may come into his hands by virtue of the authority conferred. The court may thereupon issue to the guardian or committee ancillary letters as such guardian or committee,

without citation, or may cite such persons as it believes proper to show cause why the application should be refused; and the court shall require the security required by law in like cases from a resident guardian or committee.

(Sept. 14, 1965, 79 Stat. 739, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-111. 1973 Ed., § 21-111.

§ 21-112. Suits by ancillary guardian.

(a) Upon the granting of ancillary letters, the guardian may institute and prosecute to judgment any action in the courts of the District of Columbia, take possession of all property of his ward, and collect and receive all moneys belonging and due to him therein, give full receipt and acquittances for debts, and release all claims, liens, and mortgages belonging to the ward, on property in the District of Columbia, in the same manner as if his authority had been originally conferred by the Probate Court.

(b) The guardian shall give security for the costs which may accrue in an action brought by him, in the same manner as other nonresidents bringing suit in the courts of the District.

(Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(a)(1).)

Prior Codifications. — 1981 Ed., § 21-112. 1973 Ed., § 21-112.

§ 21-113. Enjoining spouse, parent, or testamentary guardian from interfering with minor's estate.

On application of a friend of an infant entitled to real or personal estate, or in the exercise of its own discretion, the court may enjoin a parent or spouse or testamentary guardian from interfering with the infant's estate without being appointed and giving bond as guardian of the estate.

(Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1; Oct. 1, 1976, D.C. Law 1-87, § 30(a), 23 DCR 2544.)

Prior Codifications. — 1981 Ed., § 21-113. 1973 Ed., § 21-113.

Legislative history of Law 1-87. — For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 21-102.

§ 21-114. Bond from parents of child entitled to property.

When an infant whose father or mother is living becomes entitled to property, the Probate Court may require the father or mother, as guardian, to give bond and security to account for the property, and on his or her failure or refusal so to do may appoint another person guardian, who shall give bond as in other cases.

(Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1.)

Cross references. — Undertaking in lieu of fiduciary bond, see § 16-601.

Prior Codifications. — 1981 Ed., § 21-114. 1973 Ed., § 21-114.

§ 21-115. Bond of guardian of estate.

A guardian appointed by the court, other than a corporation authorized to act as guardian, and a testamentary guardian, unless otherwise directed by the will making the appointment, before entering upon or taking possession of or interfering with the estate of the infant, shall execute a bond in such penalty and with such surety as the court approves, to be recorded and to be liable to be sued upon for the use of a person interested, with the condition that if he, as guardian, faithfully accounts to the court, as required by law, for the management of the property and estate of the infant under his care, and delivers up the property agreeably to the order of the court or the directions of law, and in all respects performs the duty of guardian according to law, then the obligation shall cease; it shall otherwise remain in full force.

(Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(a) (2).)

Cross references. — Undertaking in lieu of fiduciary bond, see § 16-601.

Prior Codifications. — 1981 Ed., § 21-115. 1973 Ed., § 21-115.

CASE NOTES

Appeal of orders.

Appeal from order setting the filing of a bond as a condition of appointment as guardian of estate was premature where there were currently no assets in the estate, and thus no need for the guardian of the estate to function. D.C. Code 1981, § 21-115. In re Guardianship of J.L.N., 557 A.2d 1313, 1989 D.C. App. LEXIS 78 (1989).

§ 21-116. One bond for several wards.

When a person is guardian to a number of persons entitled to shares of the same estate the court may accept one bond instead of separate bonds for each ward, and the bond shall be liable to be sued upon for the use of all or any of the wards as fully as separate bonds might be.

(Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-116. 1973 Ed., § 21-116.

§ 21-117. Additional bond.

The court may at any time require a guardian to give bond or additional bond, when the interests of the infant require it, and on his failure or refusal so to do, may revoke his appointment and appoint another guardian in his place, and require the estate of the infant to be forthwith delivered to the newly appointed guardian, and may direct the latter to bring suit upon the bond of his predecessor.

(Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-117. 1973 Ed., § 21-117.

§ 21-118. Counter security; petition by surety.

If a surety of a guardian by petition sets forth that he apprehends himself to be in danger of loss in consequence of his suretyship, and prays the court to be relieved, the court, after summoning the guardian to answer the petition, may require him to give counter security to indemnify his original surety or to deliver his ward's estate into the hands of the surety or of another person. In either case, the court shall require sufficient security for the proper management and application of the estate to be given by the person into whose hands the estate is delivered, and make such other order as seems just.

(Sept. 14, 1965, 79 Stat. 740, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-118. 1973 Ed., § 21-118.

§ 21-119. Allowances made before bond given.

An allowance made to a guardian for the clothing, support, maintenance, education or other expenses incurred for the ward or his estate, before the guardian gives bond or is appointed, has the same effect in law as if made subsequently to the appointment of the guardian and his giving bond.

(Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-119. 1973 Ed., § 21-119.

CASE NOTES

Reimbursement.

Surety was required to reimburse estate for amount that the estate paid to satisfy judgment against guardian of estate for the default on a loan by a previous guardian prior to issuance of surety bond; guardianship statute evinced a legislative intent to require a surety to assume liability for at least some pre-bond conduct of the guardian with respect to guardianship assets, and surety did not expressly disclaim liability for damages related to specific pre-bond conduct at issue. Hartford Fin. Servs. Group v. Hand, 30 A.3d 180, 2011 D.C. App. LEXIS 610 (2011).

§ 21-120. Settlement of actions involving minor children; appointment of guardian of estate.

(a) A person entitled to maintain or defend an action on behalf of a minor child, including an action relating to real estate, is competent to settle an action so brought and, upon settlement thereof or upon satisfaction of a judgment obtained therein, is competent to give a full acquittance and release of all liability in connection with the action, but such a settlement is not valid unless approved by a judge of the court in which the action is pending.

(b) A person may not receive money or other property on behalf of a minor in settlement of an action brought on behalf of or against the minor or in satisfaction of a judgment in the action, where, after deduction of fees, costs and all other expenses incident to the matter, the net value of the money and property due the minor exceeds $3,000, before he is appointed by a court of

competent jurisdiction as guardian of the estate of the minor to receive the money or property, and qualifies as such.

(Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-120. 1973 Ed., § 21-120.

CASE NOTES

ANALYSIS

Actions for negligence or wrongful acts.
Appointment of special master.
Dismissal of action.
In general.

Actions for negligence or wrongful acts.

Where wrongful death claim, whose settlement did not require court approval to be valid, was merged into settlement agreement which attorneys negotiated and no longer existed as a viable cause of action, client was therefore free to assert that attorneys' negligence deprived her of a cause of action, thus clearly providing a basis for damages. D.C. Code 1981, § 21-120(a). Swann v. Waldman, 465 A.2d 844, 1983 D.C. App. LEXIS 451 (1983).

Appointment of special master.

Although District of Columbia statute providing for guardian of property for proceeds of settlement recovered by minor plaintiff and local rule recovering examination by auditor master of accounts of fiduciaries were not applicable to action brought against aircraft corporation and third-party defendant United States on behalf of 45 infant plaintiffs who alleged they suffered compensable injury when military transport airplane crashed near Saigon, Vietnam, policies underlying statutes and rule, with their concern for extra scrutiny by court where property of minors is involved, did apply and created need for appointment of special masters. D.C. Code 1981, § 21-120; U.S.Dist.Ct.Rules D.D.C., Civil Rule 1-25; Fed.R.Civ.Proc. Rule 17(c), 18 U.S.C. Friends for All Children, Inc. v. Lockheed Aircraft Corp., 567 F. Supp. 790, 1983 U.S. Dist. LEXIS 16277 (1983).

Dismissal of action.

When civil action on behalf of minor was dismissed because minor's next friend failed to cooperate in discovery, dismissal should have been without prejudice. D.C. Code 1981, § 21-120(a, b). Godfrey v. Washington, 653 A.2d 371, 1995 D.C. App. LEXIS 9 (1995).

In general.

In appropriate case, trial court should rule so as to preserve rights of minor who would otherwise suffer significant loss due entirely to default of representative who was supposed to be, but was not, acting in minor's best interest. D.C. Code 1981, § 21-120(a, b). Godfrey v. Washington, 653 A.2d 371, 1995 D.C. App. LEXIS 9 (1995).

By adopting the Uniform Transfers to Minors Act, including the accompanying comments of the Commissioners, the legislature increased the nominal amount which does not require a judicially supervised guardianship to $10,000. It has imposed, nonetheless, specific fiduciary standards on the individual receiving the funds from a tort obligor such as those imposed by § 21-312, 21-314, 21-317 and 21-319. K.A.E. v. Manuel, 115 WLR 2589 (Super. Ct. 1987).

Subchapter II. Property of Infants.

§ 21-141. Possession of property.

On the execution of his bond, a guardian is entitled to an order of the court directing the real and personal estate of the ward to be delivered into his possession, and all legacies and distributive shares to which the ward is entitled to be paid or delivered to him when they are properly payable or distributable according to law.

(Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-141. 1973 Ed., § 21-141.

CASE NOTES

ANALYSIS

Executor as legatee.
Right to possession.
Rights resulting from control of property.
Trust relationship.

Executor as legatee.

The law effects the necessary transfer of a fund from one holding it as executor to himself as guardian. No formal transfer is necessary. U.S., to Use of Lang v. May, 15 D.C. 4 (D.C.Sup. 1885).

Right to possession.

Requiring adult children of ward to transfer to conservators alleged testamentary document entrusted to children by ward was not improper on ground that will was not part of ward's estate in his lifetime. D.C. Code § 21-141. Price v. Williams, 393 F.2d 348, 1968 U.S. App. LEXIS 8568 (C.A.D.C. 1968).

Upon appointment of minor's stepmother as guardian of the minor, the stepmother became entitled to the possession of all property of the minor. Dunlap v. Jones, 38 F.Supp. 593, 1941 U.S. Dist. LEXIS 3278 (D.D.C1941).

Where infant's funds were in custody of guardian who was under adequate bond, and litigation between guardian and another claimant concerning right to administer the fund for the infant was pending, district court, which decided that guardian was required to bear burden of litigation over conflicting claims concerning right to administer the fund, would in exercise of its discretion order custody of fund to remain in guardian during pendency of litigation, so as to avoid additional expense to the infant's estate which would be incurred if custody of fund were changed, since there was no "vested right" to custody of fund during litigation and district court had duty to protect the infant's interests. In re Dunlap's Guardianship, 36 F.Supp. 545, 1941 U.S. Dist. LEXIS 3914 (D.D.C1941).

Rights resulting from control of property.

The control of a guardian of the real estate of his ward constitutes a sufficient entry to invest the ward with actual seisin. McKnight v. McKnight, 16 F.Cas. 229, 1853 U.S. App. LEXIS 725 (1853).

Trust relationship.

Where insured designated his daughter as beneficiary of life policy unless daughter should be under 21 years of age at time of payment, in which event money should be payable in trust for daughter to trustee, whose receipt and release should constitute full discharge of all liability, insurance money was daughter's property to be administered by daughter's guardian, and there was no ground for trustee's claim that trustee was entitled to money for herself. Jones v. Dunlap, 128 F.2d 763, 1942 U.S. App. LEXIS 3713 (1942).

Where designation of life policy beneficiary which named insured's daughter as beneficiary and provided that if daughter should be under 21 years of age at time of payment, money should be payable in trust for daughter was construable as creating a dry trust or passive trust, merely for purpose of enabling some one sui juris to execute receipt and release to insurer without which the daughter if then a minor could not obtain the money, a guardian appointed for the daughter who was a minor at time of payment of proceeds of policy was entitled to possession of proceeds which were required to be expended by guardian for benefit of the daughter under direction of court and protected by guardian's bond. Dunlap v. Jones, 38 F.Supp. 593, 1941 U.S. Dist. LEXIS 3278 (D.D.C1941).

§ 21-142. Inventory.

Within three months after the execution and approval of his bond, a guardian shall return to the court, under oath, an inventory of the real and personal estate of his ward and of the probable annual income thereof, and the court may direct the estate to be appraised and the annual income thereof to be ascertained by two competent persons, to be appointed by the court, who shall report their appraisement and finding under oath.

(Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, § 1.)

Cross references. — Married infant property rights, see § 46-601.

Prior Codifications. — 1981 Ed., § 21-142. 1973 Ed., § 21-142.

§ 21-143. Duties; accounts; maintenance and education; sales; compensation.

A guardian shall manage the estate for the best interests of the ward, and once in each year, or oftener if required, he shall settle an account of his trust under oath. He shall account for all profit and increase of his ward's estate and the annual value thereof, and shall be allowed credit for taxes, repairs, improvements, expenses, and commissions, and he is not answerable for any loss or decrease sustained without his fault. The court shall determine the amounts to be expended annually in the maintenance and education of the infant, regard being had to his future condition and prospects in life; and if it deems it advantageous to the ward, may allow the guardian to exceed the income of the estate and to make use of the principal and sell it or part thereof, under the court's order, as provided by this subchapter; but a guardian may not sell any property of his ward without an order of the court previously had therefor. The court shall allow a reasonable compensation for services rendered by the guardian not exceeding a commission of five per centum of the amounts collected, if and when disbursed.

(Sept. 14, 1965, 79 Stat. 741, Pub. L. 89-183, § 1.)

Cross references. — Capacity of minor to contract for life, health, and accident insurance, see § 31-4330.

Care for minor children, failure to provide, see §§ 22-1101 and 22-1102.

Child labor and work permits, see § 32-201 et seq.

Consent to marriage of minor, see § 46-411.

Enforcement of personal property taxes by distraint or levy, see § 47-1601.

Real estate leases involving minors, see § 42-3225 et seq.

Tax sale redemption rights of minors, see § 47-1304.

Prior Codifications. — 1981 Ed., § 21-143. 1973 Ed., § 21-143.

CASE NOTES

Compensation of guardian.

Use of figure of 5% as rule of thumb for fixing reasonable compensation to guardians ad litem and conservators appointed pursuant to statute governing guardians of property of mentally incompetent persons is permissible. D.C. Code §§ 21-143, 21-1503, 21-1504. Mitchell v. Ensor, 412 F.2d 155, 1969 U.S. App. LEXIS 9085 (C.A.D.C. 1969).

Guardian of ward's estate was required to obtain court approval prior to taking a five percent ordinary commission and a five percent turnover commission from the estate funds. In re Estate of Greene, 851 A.2d 418, 2004 D.C. App. LEXIS 269 (2004).

Guardian of estate is forbidden from drawing any compensation from a ward's estate for services rendered by the guardian until the court has approved both the right to compensation and a specified amount. In re Estate of Greene, 851 A.2d 418, 2004 D.C. App. LEXIS 269 (2004).

Under evidence that commission paid to substitute conservator of estate was based on character of services rendered, amount of time spent, and size of estate administered, and that commission did not exceed statutory limit of 5% of disbursements, trial court did not abuse its discretion in approving payment of such commission to conservator. D.C. Code §§ 21-143, 21-1503. Rosendorf v. Toomey, 349 A.2d 694, 1975 D.C. App. LEXIS 288 (1975).

§ 21-144. Property subject to liens.

When an infant is entitled to real or personal estate in the District of Columbia which is liable to a mortgage, trust, or lien, or is in any way charged

with the payment of money, the court may decree in the case as if the infant were of full age.

(Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1.)

Cross references. — Mortgages, rights of infants, see §§ 42-808 and 42-809.

Prior Codifications. — 1981 Ed., § 21-144. 1973 Ed., § 21-144.

§ 21-145. Property subject to executory contract.

When an infant is:

(1) entitled to real or personal estate in the District of Columbia bound by executory contract entered into by the person from whom the infant derived title; or

(2) claims a right or interest in property under such a contract—

the court may decree the execution of the contract or enter a just and proper decree, as if the parties were of full age.

(Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-145. 1973 Ed., § 21-145.

§ 21-146. Contract for sale by adult in behalf of himself and infant.

When a contract is made for the sale of real estate by persons interested therein jointly or in common with an infant, for and in behalf of all the persons so interested, which the court, upon a hearing and examination of the circumstances, considers to be for the interest and advantage both of the infant and of the other persons interested therein to be confirmed, the court may confirm the contract and order a deed to be executed according to it. Sales and deeds made in pursuance of the order are sufficient in law to transfer the estate and interest of the infant in the real estate.

(Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1.)

Cross references. — Partition of lands, tenements, or hereditaments on the complaint of a tenant in common, effect of this section, see § 16-2901.

Prior Codifications. — 1981 Ed., § 21-146. 1973 Ed., § 21-146.

§ 21-147. Sale of infant's principal for maintenance or education.

When it appears, upon the verified petition of a guardian, or in a case of his refusal to act, a next friend of an infant, and the appearance and answer of the infant by guardian to be appointed by the court, and proof by deposition of one or more disinterested witnesses, that a sale of the principal of the infant's estate, or of a part thereof, whether real or personal, is necessary for his maintenance or education, regard being had to his condition and prospects in

life, the Probate Court may decree the sale on terms which to it seem proper.

(Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1.)

Cross references. — Nonresident infants, appointment of ancillary guardian, see §§ 21-111, 21-112.

Probate court proceedings, see § 16-3101 et seq.

Prior Codifications. — 1981 Ed., § 21-147. 1973 Ed., § 21-147.

§ 21-148. Sale or exchange of real estate; proceedings.

When a guardian or, in case of his refusal to act, a next friend, deems that the interests of the ward will be promoted by a sale of his freehold or leasehold estate in lands, for the purpose of reinvesting the proceeds in other property or securities, or by an exchange of the property for other property, he may file a verified petition in the court, setting forth all the estate of the ward, real and personal, and all the facts which, in his opinion, tend to show whether the ward's interest will be promoted by the sale or exchange.

(Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-148. 1973 Ed., § 21-148.

§ 21-149. Parties.

The infant, together with those who would succeed to the estate if he were dead, shall be made parties defendant in the proceeding provided by section 21-148; and the court shall appoint a fit and disinterested person to be guardian ad litem for the infant, who shall answer the petition under oath. The infant also, if above the age of 14 years, shall answer the petition in proper person, under oath.

(Sept. 14, 1965, 79 Stat. 742, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-149. 1973 Ed., § 21-149.

§ 21-150. Proof.

Every fact material to determine the propriety of a sale or exchange shall be clearly proved, in a proceeding brought pursuant to section 21-148, by disinterested witnesses, whose testimony shall be taken in writing in the presence of the guardian ad litem or upon interrogatories agreed upon by him.

(Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-150. 1973 Ed., § 21-150.

§ 21-151. Decree of sale; costs.

When, in a proceeding brought pursuant to section 21-148, the court is satisfied from the evidence that the interests of the infant require a sale or exchange, as prayed, and the rights of others will not be violated thereby, the

sale or exchange may be decreed, and the costs of the suit shall be paid out of the infant's estate; otherwise they shall be paid by the complainant.

(Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-151. 1973 Ed., § 21-151.

CASE NOTES

Order or decree.

The order of the orphans' court permitting the sale to be made, or of the chancery court approving the sale, cannot be collaterally impeached on the ground that there is no record of any evidence on which the orders were based, or of any subsequent accounting by the guardian for the proceeds of the sale. Thaw v. Falls, 10 S.Ct. 1037, 1890 U.S. LEXIS 2227 (U.S.Dist.Col. 1890).

§ 21-152. Terms of sale; lien.

A sale pursuant to a decree issued pursuant to section 21-151 may be made upon such terms as to cash and credit as the court directs, and a lien shall be retained on the property sold for the purchase money.

(Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-152. 1973 Ed., § 21-152.

§ 21-153. Exchanges; appointment of trustees.

In decreeing an exchange of an infant's estate for other property, pursuant to section 21-151, the court need not require equality or sameness in the quantity or character of the estate or interest, and the court may appoint trustees to execute the deeds necessary to carry the exchange into effect.

(Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-153. 1973 Ed., § 21-153.

§ 21-154. Ratification of sales by court.

A sale of property of an infant is not effectual to pass title to the property sold until it is reported to and ratified by the court.

(Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-154. 1973 Ed., § 21-154.

§ 21-155. Sale or exchange of particular estate or remainder; application of income.

Where an infant is entitled to a particular estate, as for life or years, and another person is entitled to an estate in remainder or reversion or by way of executory devise in the same property, or the other person is entitled to the particular estate and the infant is entitled in remainder or reversion or executory devise, the court may decree a sale or exchange as provided by sections 21-148 to 21-153, having reference solely to the interests of the infant,

if the other person so interested consents to the sale or exchange and execute the conveyances necessary to carry it into effect. The court shall direct the annual income from the fund or property acquired by the sale or exchange to be applied according to the interests of the respective parties.

(Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-155. 1973 Ed., § 21-155.

§ 21-156. Lease of infant's estate.

Where it appears to the court that it will be to the advantage of the infant that his real estate be demised, the court shall decree that it be demised for a term of years not to exceed the minority of the infant, yielding such rents and on such terms and conditions as the court directs. Where the infant is entitled to only a part of the estate, the decree demising the estate shall be made only if all the owners of the other interest assent.

(Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-156. 1973 Ed., § 21-156.

§ 21-157. Mortgage of infant's estate.

Where it appears to the court by proof that it would be for the advantage of the infant to raise money by mortgage for his maintenance or to improve his real property or to pay off charges, liens, or incumbrances thereon, the court may, on the application of the guardian or of the infant by next friend, decree a conveyance of the property, by mortgage or deed of trust, to be executed by the guardian, on such terms as to the court seem expedient. This section also applies where the infant holds jointly or in common with other persons of full age or holds a portion of the estate, as a particular estate, for life or years or in remainder or reversion, if the other owners interested, all being of full age, consent to the decree and unite in the mortgage or deed of trust.

(Sept. 14, 1965, 79 Stat. 743, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-157. 1973 Ed., § 21-157.

§ 21-158. Final account.

On arrival of a ward at the age of 18 years the guardian shall exhibit a final account of his trust to the court and shall, agreeably to the court's order, deliver up to the ward all the property of the ward in his hands and if he fails to do so, his bond may be sued upon for the use of the party interested, and he may be attached.

(Sept. 14, 1965, 79 Stat. 744, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(a) (3); July 22, 1976, D.C. Law 1-75, § 4(c), 23 DCR 1181.)

Prior Codifications. — 1981 Ed., § 21-158. 1973 Ed., § 21-158.
Legislative history of Law 1-75. — For legislative history of D.C. Law 1-75, see Historical and Statutory Notes following § 21-104.

CASE NOTES

Final accounting.
Fact that guardian paid federal tax deficiency from the ward's estate upon preparing the return and receiving notice of the deficiency after the ward had attained the age of majority did not preclude trial court from approving guardian's actions in final accounting; the ward unquestionably owed back taxes, prior guardian withheld financial information that caused the guardian to file an inaccurate return, guardian acted pursuant to a court order, and the ward was in a far better position to negotiate with the IRS to seek a refund of lump sum payment, after allegedly entering into an installment arrangement. In re Estate of Greene, 851 A.2d 418, 2004 D.C. App. LEXIS 269 (2004).

Subchapter III. Indigent Boys.

§ 21-181. Enlistment of indigent minor children.

The Probate Court may appoint guardians to indigent minor children for the purpose of securing their enlistment in the naval or marine service of the United States, as provided by law, free of costs on account of the proceeding.

(Sept. 14, 1965, 79 Stat. 744, Pub. L. 89-183, § 1; Oct. 1, 1976, D.C. Law 1-87, § 31(a)(2), (3), 23 DCR 2544.)

Prior Codifications. — 1981 Ed., § 21-181. 1973 Ed., § 21-181.
Legislative history of Law 1-87. — For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 21-102.

§ 21-182. Preparation of guardianship papers.

The Register of Wills shall prepare papers in connection with appointment of guardians to enable indigent minor children to enlist in the United States Navy as provided by law, without making a charge therefor.

(Sept. 14, 1965, 79 Stat. 744, Pub. L. 89-183, § 1; Oct. 1, 1976, D.C. Law 1-87, § 31(a)(4), 23 DCR 2544.)

Prior Codifications. — 1981 Ed., § 21-182. 1973 Ed., § 21-182.
Legislative history of Law 1-87. — For legislative history of D.C. Law 1-87, see Historical and Statutory Notes following § 21-102.

CHAPTER 3. TRANSFERS TO MINORS; UNIFORM LAW.

Sec.
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§ 21-301. Definitions.

For purposes of this chapter the term:

(1) "Adult" means an individual who has attained the age of 18 years.

(2) "Benefit plan" means an employer's plan for the benefit of an employee or a partner.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(5) "Court" means the Superior Court of the District of Columbia.

(6) "Custodial property" means 1 of the following:

(A) Any interest in property transferred to a custodian under this chapter; and

(B) The income from and the proceeds of that interest in property.

(7) "Custodian" means a person so designated under section 21-309 or a successor or substitute custodian designated under section 21-318.

(8) "District" means the District of Columbia.

(9) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.

(10) "Legal representative" means an individual's personal representative or conservator.

(11) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(12) "Minor" means an individual who has not reached the age of 18 years.

(13) "Person" means an individual, a corporation, an organization, or other legal entity.

(14) "Personal representative" means an executor, administrator, succes-

sor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(15) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession subject to the legislative authority of the United States.

(16) "Transfer" means a transaction that creates custodial property under section 21-309.

(17) "Transferor" means a person who makes a transfer under this act.

(18) "Trust company" means a financial institution, a corporation, or other legal entity authorized to exercise general trust powers.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Cross references. — Payment of lottery prize by or on behalf of minor, see § 3-1335.

Prior Codifications. — 1981 Ed., § 21-301.

Legislative history of Law 6-87. — Law 6-87, the "District of Columbia Uniform Transfers to Minors Act," was introduced in Council and assigned Bill No. 6-58, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 19, 1985, and December 3, 1985, respectively. Signed by the Mayor on December 30, 1985, it was assigned Act No. 6-115 and transmitted to both Houses of Congress for its review.

References in text. — "This act", referred to in paragraph (17), is the District of Columbia Uniform Transfers to Minors Act, D.C. Law 6-87 which is codified primarily as § 21-301 et seq.

Editor's notes. — Uniform Law: This section is based upon § 1 of the Uniform Transfers to Minors Act.

§ 21-302. Scope and jurisdiction.

(a) This chapter applies to a transfer that refers to this act in the designation under section 21-309(a) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the District or the custodial property is located in the District. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor or the custodian, or despite the removal of custodial property from the District.

(b) A person designated as custodian under this chapter is subject to personal jurisdiction in the District with respect to any matter relating to the custodianship.

(c) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act, of another state is governed by the law of the designated state and may be executed and is enforceable in the District if, at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278; Apr. 30, 1988, D.C. Law 7-104, § 6(a), 35 DCR 147; Mar. 24, 1998, D.C. Law 12-81, § 14(a), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 21-302.

Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

Legislative history of Law 7-104. — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

References in text. — "This act," referred to in the first sentence of subsection (a) of this section, is the District of Columbia Uniform Transfers to Minors Act, D.C. Law 6-87 which is codified primarily as § 21-301 et seq.

Editor's notes. — Uniform Law: This section is based upon § 2 of the Uniform Transfers to Minors Act.

§ 21-303. Nomination of custodian.

(a) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: "as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act." The nomination may name 1 or more persons as substituted custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, the issuer, or other obligor of the contractual rights.

(b) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under section 21-309(a).

(c) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under section 21-309. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to section 21-309.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Prior Codifications. — 1981 Ed., § 21-303.

Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

Editor's notes. — Uniform Law: This section is based upon § 3 of the Uniform Transfers to Minors Act.

§ 21-304. Transfer by gift or exercise of power of appointment.

A person may make a transfer by irrevocable gift to, or the irrevocable

exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to section 21-309.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Prior Codifications. — 1981 Ed., § 21-304.
Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

Editor's notes. — Uniform Law: This section is based upon § 4 of the Uniform Transfers to Minors Act.

§ 21-305. Transfer authorized by will or trust.

(a) A personal representative or trustee may make an irrevocable transfer pursuant to section 21-309 to a custodian for the benefit of a minor as authorized in the governing will or trust, subject to the authority of the court under section 20-1106.

(b) If the testator or the settlor has nominated a custodian under section 21-303 to receive the custodial property, the transfer must be made to that person.

(c) If the testator or the settlor has not nominated a custodian under section 21-303 or if all persons so nominated die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee shall designate a custodian from among those eligible to serve as custodian for property of that kind under section 21-309(a).

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Prior Codifications. — 1981 Ed., § 21-305.
Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

Editor's notes. — Uniform Law: This section is based upon § 5 of the Uniform Transfers to Minors Act.

§ 21-306. Other transfers by fiduciary.

(a) Subject to subsection (c) of this section, a personal representative or trustee may make an irrevocable transfer to another adult or to a trust company, as custodian, for the benefit of a minor pursuant to section 21-309, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) Subject to subsection (c) of this section, a conservator may make an irrevocable transfer to another adult or to a trust company, as custodian, for the benefit of the minor pursuant to section 21-309.

(c) A transfer under subsection (a) or (b) of this section may be made only if the following occur:

(1) The personal representative, the trustee, or the conservator considers the transfer to be in the best interests of the minor;

(2) The transfer is not prohibited by or inconsistent with the provisions of the applicable will, trust agreement, or other governing instrument; and

(3) The transfer is authorized by the court if it exceeds $10,000 in value.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Prior Codifications. — 1981 Ed., § 21-306.

Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

Editor's notes. — Uniform Law: This section is based upon § 6 of the Uniform Transfers to Minors Act.

§ 21-307. Transfer by obligor.

(a) Subject to subsection (b) and (c) of this section, a person not subject to section 21-305 or 21-306 and who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to section 21-309.

(b) If a person having the right to do so under section 21-303 has nominated a custodian under that section to receive the custodial property, then the transfer must be made to that person.

(c) With the exception of section 21-120, if no custodian has been nominated under section 21-303, or if all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, then a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds $10,000 in value.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278; Apr. 30, 1988, D.C. Law 7-104, § 6(b), 35 DCR 147; Feb. 5, 1994, D.C. Law 10-68, § 21, 40 DCR 6311.)

Prior Codifications. — 1981 Ed., § 21-307.

Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

Legislative history of Law 7-104. — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 21-302.

Legislative history of Law 10-68. — D.C. Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Editor's notes. — Uniform Law: This section is based upon § 7 of the Uniform Transfers to Minors Act.

CASE NOTES

In general.

By enacting the District of Columbia Uniform Transfers to Minors Act, it was the unequivocal intent of the legislature to provide a method for tort debtors to pay to responsible parties (for the benefit of a minor) nominal sums for which they, the tort debtors, have become obligated. K.A.E. v. Manuel, 115 WLR 2589 (Super. Ct. 1987).

By adopting the Uniform Transfers to Minors Act, including the accompanying comments of the Commissioners, the legislature increased the nominal amount which does not require a judicially supervised guardianship under § 21-120. It has imposed, nonetheless, specific fiduciary standards on the individual receiving the funds from a tort obligor such as those imposed by § 21-312, 21-314, 21-317 and 21-319. K.A.E. v. Manuel, 115 WLR 2589 (Super. Ct. 1987).

§ 21-308. Receipt for custodial property.

A written acknowledgement of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred under this act.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Prior Codifications. — 1981 Ed., § 21-308.

Legislative history of Law 6-87. — For

legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

References in text. — "This act", referred to at the end of the section, is the District of Columbia Uniform Transfers to Minors Act, D.C. Law 6-87 which is codified primarily as § 21-301 et seq.

Editor's notes. — Uniform Law: This section is based upon § 8 of the Uniform Transfers to Minors Act.

§ 21-309. Manner of creating custodial property and effecting transfer; designation of initial custodian; control.

(a) Custodial property is created and a transfer is made when:

(1) An uncertificated security is either:

(A) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act"; or

(B) Delivered with the necessary documents and endorsements for transfer to an adult other than the transferor or to a trust company, as custodian, accompanied by an instrument in substantially the form described in subsection (b) of this section;

(2) A certificated security in registered form is either:

(A) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act"; or

(B) Delivered, together with any necessary endorsements, to an adult other than the transferor or to a trust company, as custodian, accompanied by an instrument in substantially the form described in subsection (b) of this section;

(3) Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act";

(4) The ownership of a life or endowment insurance policy or annuity contract is either:

(A) Registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act"; or

(B) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act";

(5) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust

company, whose name in the notification is followed in substance by the words: "as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act";

(6) An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act";

(7) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(A) Issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act"; or

(B) Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act"; or

(8) An interest in any property not described in paragraphs (1) through (7) of this subsection is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (b) of this section.

(b) An instrument in the following form satisfies the requirements of paragraphs (1)(B), (2)(B), and (8) of subsection (a) of this section:

TRANSFER UNDER THE DISTRICT OF COLUMBIA
UNIFORM TRANSFERS TO MINORS ACT

I, _____ [name of transferor or name of representative capacity if a fiduciary] hereby transfer to _____ [name of custodian], as custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act, the following: [insert a description of the custodian property sufficient to identify it].

Dated: _____

_____

[Signature]

_____ [name of custodian] acknowledges receipt of the property described above as a custodian for the minor named above under the District of Columbia Uniform Transfers to Minors Act.

Dated: _____

_____

[Signature of Custodian]

(c) A transferor shall place the custodian in control of the custodial property as soon as practicable.

(d) A transferor who transfers property to an individual under the age of 21 years pursuant to section 21-304 or 21-305 may expressly provide that the custodian shall deliver, convey, or pay the property to the individual on the

individual's attaining the age of 21 by inclusion of the parenthetical "(21)" after the words "District of Columbia Uniform Transfers to Minors Act" or substantially similar language. In such case, the word "minor", as used in this chapter, shall mean an individual who has not attained the age of 21 years.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278; Mar. 24, 1998, D.C. Law 12-81, § 14(b), 45 DCR 745; Apr. 27, 2001, D.C. Law 13-292, § 602(a), 48 DCR 2087.)

Prior Codifications. — 1981 Ed., § 21-309.

Effect of amendments. — D.C. Law 13-292, in subsec. (a)(8), substituted "paragraphs (1) through (7)" for "paragraphs (1) through (6)"; and added subsec. (d).

Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-302.

Legislative history of Law 13-292. — Law 13-292, the "Omnibus Trusts and Estates Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-298, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 26, 2001, it was assigned Act No. 13-599 and transmitted to both Houses of Congress for its review. D.C. Law 13-292 became effective on April 27, 2001.

Editor's notes. — Uniform Law: This section is based upon § 9 of the Uniform Transfers to Minors Act.

§ 21-310. Single custodianship.

A transfer shall be made only for 1 minor, and only 1 person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Prior Codifications. — 1981 Ed., § 21-310.

Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

Editor's notes. — Uniform Law: This section is based upon § 10 of the Uniform Transfers to Minors Act.

§ 21-311. Validity and effect of transfer.

(a) The validity of a transfer made in a manner prescribed in this act is not affected by the following:

(1) Failure of the transferor to comply with section 21-309(c) concerning possession and control;

(2) Designation of an ineligible custodian, except designation of the transferor in the case of property, over which the transferor is ineligible to serve as custodian under section 21-309(a); or

(3) Death or incapacity of a person nominated under section 21-303 or designated under section 21-309 as custodian or the disclaimer of the office by that person.

(b) A transfer made pursuant to section 21-309 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, the powers, the duties, and the authority provided in this chapter, and neither the minor nor the minor's legal representative has a right, power, duty, or authority with respect to the custodial property except as provided in this chapter.

(c) By making a transfer, the transferor incorporates in the disposition the provisions of this chapter and grants to the custodian, and to a third person dealing with a person designated custodian, the respective powers, rights, and immunities provided in this chapter.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Prior Codifications. — 1981 Ed., § 21-311.

Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

References in text. — "This act," referred to in the introductory language of subsection (a) of this section, is the District of Columbia Uniform Transfers to Minors Act, D.C. Law 6-87 which is codified primarily as § 21-301 et seq.

Editor's notes. — Uniform Law: This section is based upon § 11 of the Uniform Transfers to Minors Act.

§ 21-312. Care of custodial property.

(a) A custodian shall perform the following:

(1) Take control of custodial property;

(2) Register or record title to custodial property if appropriate; and

(3) Collect, hold, manage, invest, and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain custodial property received from a transferor.

(c) A custodian may invest in or pay premiums on life insurance or endowment policies on the following:

(1) The life of the minor only if the minor or the minor's estate is the sole beneficiary; or

(2) The life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian is the irrevocable beneficiary.

(d) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is properly identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is properly identified if it is recorded, and custodial property subject to registration is properly identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "as a custodian for _____ [name of minor] under the District of Columbia Uniform Transfers to Minors Act".

(e) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reason-

able intervals by a parent or legal representative of the minor or by the minor, if the minor has reached the age of 14 years.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Prior Codifications. — 1981 Ed., § 21-312.
Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

Editor's notes. — Uniform Law: This section is based upon § 12 of the Uniform Transfers to Minors Act.

§ 21-313. Powers of custodian.

(a) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(b) This section does not relieve a custodian from liability for breach of section 21-312.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Prior Codifications. — 1981 Ed., § 21-313.
Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

Editor's notes. — Uniform Law: This section is based upon § 13 of the Uniform Transfers to Minors Act.

§ 21-314. Use of custodial property.

(a) A custodian may deliver or pay to the minor or expend for the minor's benefit as much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to the following:

(1) The duty or the ability of the custodian personally or of another person to support the minor; or

(2) Other income or property of the minor which may be applicable or available for that purpose.

(b) On petition of an interested person or of the minor, if the minor has reached the age of 14 years, the court may order the custodian to deliver or pay to the minor or to expend for the minor's benefit as much of the custodial property as the court considers advisable for the use and the benefit of the minor.

(c) A delivery, a payment, or an expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Prior Codifications. — 1981 Ed., § 21-314.
Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

Editor's notes. — Uniform Law: This section is based upon § 14 of the Uniform Transfers to Minors Act.

§ 21-315. Custodian's expenses; compensation; bond.

(a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for one who is a transferor under section 21-304, a custodian has a non-cumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Except as provided in section 21-318(f), a custodian need not give a bond.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Prior Codifications. — 1981 Ed., § 21-315.

Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

Editor's notes. — Uniform Law: This section is based upon § 15 of the Uniform Transfers to Minors Act.

CASE NOTES

Court costs.

Custodian, who appealed trial court finding that he had failed to fulfill certain responsibilities under Uniform Gifts to Minors Act and who asserted on appeal that appellee, who was paternal grandmother of minors, was officious intermeddler and that money damages were not awardable in suit for accounting, asserted frivolous appeal, which was likely interposed for delay, within rule authorizing award of costs and damages against appellant whose appeal is frivolous. D.C. Code §§ 21-301 et seq., 21-307(e); D.C. Code Court of Appeals Rules, rule 38. Tupling v. Britton, 411 A.2d 349, 1980 D.C. App. LEXIS 222 (1980).

§ 21-316. Exemption of third person from liability.

A third person, in good faith and without a court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge of the third person, shall not be responsible for determining the following:

(1) The validity of the purported custodian's designation;

(2) The propriety of, or the authority under this chapter for, any act of the purported custodian;

(3) The validity or propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(4) The propriety of the application of any property of the minor delivered to the purported custodian.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278; Mar. 24, 1998, D.C. Law 12-81, § 14(c), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 21-316.

Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-302.

Editor's notes. — Uniform Law: This section is based upon § 16 of the Uniform Transfers to Minors Act.

§ 21-317. Liability to third persons.

(a) A claim may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable, if a claim is based on the following:

(1) A contract entered into by a custodian acting in a custodial capacity;

(2) An obligation arising from the ownership or control of custodial property; or

(3) A tort committed during the custodianship.

(b) A custodian is not personally liable in the following circumstances:

(1) On a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(2) For an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278; Mar. 24, 1998, D.C. Law 12-81, § 14(d), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 21-317.

Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-302.

Editor's notes. — Uniform Law: This section is based upon § 17 of the Uniform Transfers to Minors Act.

§ 21-318. Renunciation, resignation, death, or removal of custodian; designation of successor custodian.

(a) A person nominated under section 21-303 or designated under section 21-309 as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under section 21-303, then the person who made the nomination may nominate a substitute custodian under section 21-303. Otherwise, the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under section 21-309(a). The custodian so designated has the rights of the successor custodian.

(b) A custodian at any time may designate a trust company or an adult other than a transferor under section 21-304 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, then the designation of the successor shall not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor has reached the age of 14 years and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies or becomes incapacitated without having effectively designated a successor and the minor has reached the age of 14 years, the minor may designate as successor custodian, in the manner prescribed in subsection (b) of this section, an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not reached the age of 14 years or fails to act within 60 days after the ineligibility, death, or incapacity of the custodian, then the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subsection (a) of this section or resigns under subsection (c) of this section, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(f) The transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the property of the minor, or the minor, if the minor has reached the age of 14 years, may petition the court to remove the custodian for cause and to designate a successor custodian other than the transferor under section 21-304 or to require the custodian to give appropriate bond.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278; Mar. 24, 1998, D.C. Law 12-81, § 14(e), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 21-318.

Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-302.

Editor's notes. — Uniform Law: This section is based upon § 18 of the Uniform Transfers to Minors Act.

§ 21-319. Accounting by and determination of liability of custodian.

(a) A minor who has reached the age of 14 years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court for the following:

(1) For an accounting by the custodian or the custodian's legal representative; or

(2) For a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property

unless the responsibility has been adjudicated in an action under section 21-317 to which the minor or the minor's legal representative was a party.

(b) A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) The court, in a proceeding under this act or in any other proceeding, may require or permit the custodian or the custodian's legal representative to give an accounting.

(d) If a custodian is removed under section 21-318(f), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of the instruments required for transfer of the custodial property.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278; Mar. 24, 1998, D.C. Law 12-81, § 14(f), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 21-319.

Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-302.

References in text. — "This act," referred to in subsection (c), is the District of Columbia Uniform Transfers to Minors Act, D.C. Law 6-87 which is codified primarily as § 21-301 et seq.

Editor's notes. — Uniform Law: This section is based upon § 19 of the Uniform Transfers to Minors Act.

§ 21-320. Termination of custodianship.

The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) The minor reaches 18 years of age, or if the transfer was made as provided in section 21-309(d), the minor reaches 21 years of age, with respect to custodial property transferred under section 21-304 or 21-305;

(2) The minor reaches 18 years of age with respect to custodial property transferred under section 21-306 or 21-307; or

(3) The minor's death.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278; Feb. 5, 1994, D.C. Law 10-68, § 22, 40 DCR 6311; Apr. 9, 1997, D.C. Law 11-255, § 20(a), 44 DCR 1271; Mar. 24, 1998, D.C. Law 12-81, § 14(g), 45 DCR 745; Apr. 27, 2001, D.C. Law 13-292, § 602(b), 48 DCR 2087.)

Prior Codifications. — 1981 Ed., § 21-320.

Effect of amendments. — D.C. Law 13-292, in par. (1), inserted ", or if the transfer was made as provided in section 21-309(d), the minor reaches 21 years of age," following "18 years of age".

Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-307.

Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 16-324.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-302.

Legislative history of Law 13-292. — For Law 13-292, see notes following § 21-309.

Editor's notes. — Uniform Law: This section is based upon § 20 of the Uniform Transfers to Minors Act.

§ 21-321. Applicability.

The District of Columbia Uniform Transfers to Minors Act applies to a transfer within the scope of section 21-302 made after the act's effective date if the following occurs:

(1) The transfer purports to have been made under District of Columbia Uniform Gifts to Minors Act; or

(2) The instruments by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "custodian under the Uniform Transfers to Minors Act" of any other state, and the application of the District of Columbia Uniform Transfers to Minors Act is necessary to validate the transfer.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278; Mar. 24, 1998, D.C. Law 12-81, § 14(h), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 21-321.

Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-302.

References in text. — "The act's effective date," referred to in the introductory language of subsection (a) of this section, is the effective date of D.C. Law 6-87, March 12, 1986.

Editor's notes. — Uniform Law: This section is based upon § 21 of the Uniform Transfers to Minors Act.

§ 21-322. Effect of existing custodianships.

(a) Any transfer of custodial property as now defined in this act made before the effective date of the District of Columbia Uniform Transfers to Minors Act is validated notwithstanding that there was no specific authority in the District of Columbia Uniform Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(b) This chapter applies to all transfers made before the effective date of the District of Columbia Uniform Transfers to Minors Act in a manner and form prescribed in the District of Columbia Uniform Gifts to Minors Act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships existing on the effective date of the District of Columbia Uniform Transfers to Minors Act.

(c) Sections 21-301 and 21-320 with respect to the age of a minor for whom custodial property is held under this act do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of 18 after the effective date of the District of Columbia Age of Majority Act (July 22, 1976) and before the effective date of the District of Columbia Uniform Transfers to Minors Act.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Prior Codifications. — 1981 Ed., § 21-322.

Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

References in text. — "This act," referred to near the beginning of subsection (a) of this section, is the District of Columbia Uniform Transfers to Minors Act, D.C. Law 6-87.

"The effective date of the District of Columbia Uniform Transfers to Minors Act", referred to

throughout the section, is the effective date of D.C. Law 6-87, March 12, 1986 which is codified primarily as § 21-301 et seq.

Editor's notes. — Uniform Law: This section is based upon § 22 of the Uniform Transfers to Minors Act.

§ 21-323. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Prior Codifications. — 1981 Ed., § 21-323.

Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

Editor's notes. — Uniform Law: This section is based upon § 23 of the Uniform Transfers to Minors Act.

§ 21-324. Effect of repeal of Uniform Gifts to Minors Act.

To the extent that this chapter by virtue of section 21-322(b) does not apply to transfers made in a manner prescribed in the District of Columbia Uniform Gifts to Minors Act or to the powers, duties, and its immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of the District of Columbia Uniform Gifts to Minors Act does not affect those transfers or those powers, duties and immunities.

(Mar. 12, 1986, D.C. Law 6-87, § 2(a), 33 DCR 278.)

Prior Codifications. — 1981 Ed., § 21-324.

Legislative history of Law 6-87. — For legislative history of D.C. Law 6-87, see Historical and Statutory Notes following § 21-301.

Editor's notes. — Uniform Law: This section is based upon § 27 of the Uniform Transfers to Minors Act.

Chapter 5. Hospitalization of Persons with Mental Illness.

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Subchapter I. Definitions; Commission on Mental Health.

§ 21-501. Definitions.

As used in the chapter:

(1) "Administrator" means a person in charge of a public or private hospital or his delegate;

(1A) "Chief clinical officer" means the psychiatrist or qualified psychologist for the Department who is responsible for coordinating the treatment of persons receiving mental health supports or mental health services from the Department;

(2) "Chief of service" means the physician or qualified psychologist charged with overall responsibility for the professional program of care and treatment in the particular administrative unit of the hospital to which the patient has been admitted or such other member of the medical staff as the chief of service designates;

(3) "Commission" means the Commission on Mental Health;

(3A) "Core services agency" means a community-based provider of mental health services and mental health supports that is certified by the Department and that acts as a clinical home for consumers of mental health services by providing a single point of access and accountability for diagnostic assessment, medication-somatic treatment, counseling and psychotherapy, community support services, and access to other needed services;

(4) "Court" means the Superior Court of the District of Columbia;

(4A) "Department" means the Department of Mental Health;

(4A-i) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(4B) "Mental health services" means the services funded or regulated by the Department for the purpose of addressing mental illness or mental health problems;

(4C) "Mental health supports" means the supports funded or regulated by the Department for the purpose of addressing mental illness or mental health problems;

(5) "Mental illness" means a psychosis or other disease which substantially impairs the mental health of a person;

(6) Repealed.

(7) "Physician" means a person licensed under the laws of the District of Columbia to practice medicine, or a person who practices medicine in the employment of the Government of the United States or of the District of Columbia;

(8) "Private hospital" means a nongovernmental hospital or institution, or part thereof, in the District of Columbia, equipped and qualified to provide inpatient care and treatment for a person with a physical or mental illness;

(8A) "Provider" means an individual or entity that:

(A) Is duly licensed or certified by the Department to provide mental health services or mental health supports; or

(B) Has entered into an agreement with the Department to provide mental health services or mental health supports;

(8B) "Psychiatrist" means a physician who is licensed to practice medicine in the District of Columbia, or is employed by the federal government, and has completed a residency in psychiatry;

(9) "Public hospital" means a hospital or institution, or part thereof, in the District of Columbia, owned and operated by the Government of the United States or of the District of Columbia, equipped and qualified to provide inpatient care and treatment for persons suffering from physical or mental illness;

(9A) "Qualified physician" means a person licensed under the laws of the District of Columbia to practice medicine who is board-certified in emergency medicine and certified by the Department to examine persons and prepare admission certificates pursuant to section 21-522; and

(10) "Qualified psychologist" means a person who is licensed pursuant to section 501 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.01), and has (1) one year of formal training within a hospital setting; or (2) two years of supervised clinical experience in an organized health care setting, one of which must be post-doctoral.

(Sept. 14, 1965, 79 Stat. 751, Pub. L. 89-183, § 1, July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(c)(1); Feb. 24, 1984, D.C. Law 5-48,§ 11(a)(4), (b), 30 DCR 5778; Apr. 30, 1988, D.C. Law 7-104, § 6(c), 35 DCR 147; Apr. 9, 1997, D.C. Law 11-255, § 20(b), 44 DCR 1271; Apr. 4, 2003, D.C. Law 14-283, § 2(b), 50 DCR 917; Apr. 24, 2007, D.C. Law 16-305, § 35(a)(1), 53 DCR 6198; Sept. 12, 2008, D.C. Law 17-231, § 22(a), 55 DCR 6758.)

Cross references. — Interstate Compact on Mental Health, see § 7-1101 et seq.

Jurisdiction of Family Division of Superior Court, see § 11-1101.

Mentally ill persons, see, also, §§ 21-901 et seq., 21-2001 et seq., 24-501 et seq., 44-901 et seq.

Presumption of capacity, see § 21-2203.

Representation of indigents, see § 11-2601.

Prior Codifications. — 1981 Ed., § 21-501. 1973 Ed., § 21-501.

Effect of amendments. — D.C. Law 14-283 added pars. (1A), (3A), (4A), (4B), (4C), (8A), (8B), and (9A); and repealed par. (6) which had read as follows: "(6) 'Mentally ill person' means a person who has a mental illness, but does not include a person committed to a private or public hospital in the District of Columbia by order of the court in a criminal proceeding;"

D.C. Law 16-305, in par. (8), substituted "with" for "suffering from".

D.C. Law 17-231 added par. (4A-i).

Temporary Amendment of Section. — Section 2(b)(1) of D.C. Law 14-131 added pars. (1A), (3A), (4A), (4B), (4C), (8A), (8B), and (9A) to read as follows:

"(1A) 'Chief clinical officer' means the psychiatrist or qualified psychologist for the Department who is responsible for coordinating the treatment of persons receiving mental health supports or mental health services from the Department;"

"(3A) 'Core services agency' means a community-based provider of mental health services and mental health supports that is certified by the Department and that acts as a clinical home for consumers of mental health services by providing a single point of access and accountability for diagnostic assessment, medication-somatic treatment, counseling and psychotherapy, community support services, and access to other needed services;"

"(4A) 'Department' means the Department of Mental Health;

"(4B) 'Mental health services' means the services funded or regulated by the Department for the purpose of addressing mental illness or mental health problems;

"(4C) 'Mental health supports' means the supports funded or regulated by the Department for the purpose of addressing mental illness or mental health problems;"

"(8A) 'Provider' means an individual or entity that:

"(A) Is duly licensed or certified by the Department to provide mental health services or mental health supports; or

"(B) Has entered into an agreement with the

Department to provide mental health services or mental health supports;

"(8B) 'Psychiatrist' means a physician who is licensed to practice medicine in the District of Columbia and has completed a residency in psychiatry; and"

"(9A) 'Qualified physician' means a person licensed under the laws of the District of Columbia to practice medicine who is board-certified in emergency medicine and certified by the Department to examine persons and prepare admission certificates pursuant to section 21-522."

Section 2(b)(2) of D.C. Law 14-131 repealed par. (6).

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(b) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(b) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(b) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(b) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 5-48. — Law 5-48, the "Health-Care and Community Residence Facility Hospice and Home Care Licensure Act of 1983," was introduced in Council and assigned Bill No. 5-166, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on September 20, 1983, and October 4, 1983, respectively. Signed by the Mayor on October 28, 1983, it was assigned Act No. 5-74 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 14-131. — Law 14-131, the "Mental Health Commitment Temporary Act of 2002", was introduced in Council and assigned Bill No. 14-502, which was retained by council. The Bill was adopted on first and second readings on January 8, 2002, and February 5, 2002, respectively. Signed by the Mayor on February 25, 2002, it was assigned Act No. 14-292 and transmitted to both Houses of Congress for its review. D.C. Law 14-131 became effective on May 2, 2002.

Legislative history of Law 14-283. — Law 14-283, the "Mental Health Civil Commitment Act of 2002", was introduced in Council and assigned Bill No. 14-605, which was referred to Committee on Human Services. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-617 and transmitted to both Houses of Congress for its review. D.C. Law 14-283 became effective on April 4, 2003.

Legislative history of Law 16-305. — Law 16-305, the "People First Respectful Language Modernization Act of 2006", was introduced in Council and assigned Bill No. 16-664, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 17, 2006, it was assigned Act No. 16-437 and transmitted to both Houses of Congress for its review. D.C. Law 16-305 became effective on April 24, 2007.

Legislative history of Law 17-231. — Law 17-231, the "Omnibus Domestic Partnership Equality Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-135, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on June 6, 2008, it was assigned Act No. 17-403 and transmitted to both Houses of Congress for its review. D.C. Law 17-231 became effective on September 12, 2008.

CASE NOTES

ANALYSIS

Commitment of criminal offenders.
Construction and application.
Construction with related provisions.
Mental illness.
Physician.
Purposes.
Validity of related provisions.

Commitment of criminal offenders.

Commission of criminal acts does not give rise to presumption of dangerousness which, standing alone, justifies substantial difference in commitment procedures and confinement conditions for mentally ill, that, while prior criminal conduct is relevant to determination whether person is mentally ill or dangerous, it cannot justify denial of procedural safeguards for such determination, and that prior criminal conduct does not provide automatic basis for allowing significant and arbitrary differences in such conditions apply where defendant is acquitted on his own plea of insanity. D.C. Code §§ 21-501 to 21-591, 24-301(a, d, e). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Prior criminal conduct cannot be deemed sufficient justification for substantial differences in procedures and requirements for commitment of those found not guilty by reason of insanity and other mentally ill persons. D.C. Code §§ 21-501 to 21-591. Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Rule that prior criminal conduct cannot be deemed sufficient justification for substantial differences in procedures and requirements for commitment of those found not guilty by reason of insanity and other mentally ill persons applies whether plea of insanity is raised by defendant, prosecutor or court. D.C. Code §§ 21-501 to 21-591. Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

There is no reasonable basis for distinction for commitment purposes between those who plead insanity and those who have defense thrust upon them, and neither may be automatically deprived of type of protection afforded by 1964 Hospitalization of Mentally Ill Act. D.C. Code §§ 21-501 to 21-591, 24-301(a, d, e). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Where petitioner had not himself sought introduction of insanity defense at his trial and had not acquiesced in assertion of that defense, his commitment to hospital for the mentally ill following his acquittal by reason of insanity was not authorized and he was entitled to habeas corpus. D.C. Code §§ 21-501 to 21-591, 21-544, 21-545, 22-3204, 24-301(a, d). Rouse v. Cameron, 387 F.2d 241, 1967 U.S. App. LEXIS 5201 (C.A.D.C. 1967).

Statute to effect that when it appears to court that accused is of unsound mind or is mentally incompetent so as to be unable to understand proceedings against him court may order accused committed for observation and treatment if necessary did not authorize trial judge's affording hearing to determine for commitment purposes mental condition of accused found not guilty by reason of insanity, applying release standards of 1964 Hospitalization of the Mentally Ill Act or extending to accused rights which the 1964 Act guaranteed only to those civilly committed. D.C. Code 1961, § 24-301(a); D.C. Code §§ 21-501, 21-544. Rouse v. Cameron, 387 F.2d 241, 1967 U.S. App. LEXIS 5201 (C.A.D.C. 1967).

Notwithstanding fact that appeal of denial of petition for writ of habeas corpus by person, who was acquitted by reason of insanity and summarily committed to mental hospital pursuant to mandatory provisions of District of Columbia statute raised substantial questions concerning scope of mandatory commitment and its relationship to the Hospitalization of the Mentally Ill Act, in view of petitioner's unconditional release from hospital while appeal was pending, appeal was dismissed as moot. D.C. Code 1961, §§ 22-1301, 24-301(d, e); D.C. Code §§ 21-501 to 21-591. Solomon v. Cameron, 377 F.2d 170, 1967 U.S. App. LEXIS 6901 (C.A.D.C. 1967).

One involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity has a right to treatment. D.C. Code 1961, §§ 21-501, 21-543, 21-561 to 21-564, 21-589, 24-301. Rouse v. Cameron, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

On issue of right to treatment of one involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity, effort should be to provide treatment which is adequate in light of present knowledge. D.C. Code 1961, §§ 21-501, 21-543, 21-561 to 21-564, 21-589, 24-301. Rouse v. Cameron, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

Continuing failure to provide suitable and adequate treatment of one involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity cannot be justified by lack of staff or facilities. D.C. Code 1961, §§ 21-501, 21-543, 21-561 to 21-564, 21-589, 24-301. Rouse v. Cameron, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

If court finds that a mandatorily committed patient is in custody in violation of Constitution and laws, for failure to receive treatment, it

may allow hospital a reasonable opportunity to initiate treatment, but if opportunity for treatment has been exhausted or is otherwise inappropriate conditional or unconditional release may be in order. D.C. Code 1961, §§ 21-501, 21-543, 21-561 to 21-564, 21-589, 24-301; 18 U.S.C. §§ 2241(c)(3), 2243. Rouse v. Cameron, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

On issue of right to treatment of one involuntarily committed on being acquitted of an offense by reason of insanity, hospital need not show that treatment will cure or improve him but only that there is bona fide effort to do so, and this requires hospital to show that initial and periodic inquiries are made into needs and conditions of patient with view to providing suitable treatment for him, and that the program provided is suited to his particular needs. D.C. Code 1961, §§ 21-501, 21-543, 21-561 to 21-564, 21-589, 24-301. Rouse v. Cameron, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

Claim as to inconsistency between provisions of the District of Columbia Code governing involuntary detention and commitment of mentally ill persons in District of Columbia and on federal reservations in metropolitan District of Columbia was not such as to raise a substantial constitutional question requiring convening of a three-judge court. D.C. Code §§ 21-501 et seq., 21-901 et seq.; U.S. Const. Amend. 5. Medynski v. Margolis, 389 F. Supp. 743, 1975 U.S. Dist. LEXIS 14458 (1975).

Construction and application.

Statute sanctioning commitment of mentally ill person must be narrowly construed in order to avoid deprivations of liberty without due process of law. D.C. Code §§ 21-501 to 21-591. Covington v. Harris, 419 F.2d 617, 1969 U.S. App. LEXIS 13253 (C.A.D.C. 1969).

The protection of the District of Columbia Hospitalization of the Mentally Ill Act is limited to those declared insane or of unsound mind pursuant to court order and does not include any person previously committed under the Sexual Psychopath Act. D.C. Code §§ 21-501 to 21-591, 22-3503. Millard v. Harris, 406 F.2d 964, 1968 U.S. App. LEXIS 4951 (C.A.D.C. 1968).

Court of Appeals construes Hospitalization of the Mentally Ill Act narrowly where its application results in curtailment of individual's liberty. D.C. Code 1981, §§ 21-501 to 21-592. In re Reed, 571 A.2d 801, 1990 D.C. App. LEXIS 59 (1990).

Construction with related provisions.

Under Sexual Psychopath Act, term "not insane" must be read to mean "not mentally ill" within meaning of new civil commitment statute, and the Sexual Psychopath Act applies only to those who are not mentally ill while compulsory treatment of those who are mentally ill is governed by the 1964 Civil Commitment Act. D.C. Code §§ 21-501 to 21-591, 22-3503 to 22-3511. Cross v. Harris, 418 F.2d 1095, 1969 U.S. App. LEXIS 12791 (C.A.D.C. 1969).

Since examining doctors concluded that person committed under Sexual Psychopath Act was not insane but doctors had no occasion to consider whether he was nonetheless mentally ill, there was no record on question and habeas corpus petition must be remanded for hearing and findings of fact necessary to determine whether statute was properly applied to petitioner. D.C. Code §§ 21-501 to 21-591, 22-3503 to 22-3511. Cross v. Harris, 418 F.2d 1095, 1969 U.S. App. LEXIS 12791 (C.A.D.C. 1969).

The District of Columbia Sexual Psychopath Act was not repealed by the 1964 Hospitalization of Mentally Ill Act. D.C. Code §§ 21-501 to 21-591, 22-3503(1). Millard v. Harris, 406 F.2d 964, 1968 U.S. App. LEXIS 4951 (C.A.D.C. 1968).

Although hospital ultimately took position, that patient who had been civilly committed for mental illness was releasable, record of hearing, including testimony of hospital's chief of service that patient was both mentally ill and retarded, thus presenting dual problem, did not suggest release from civil commitment under the Ervin Act merely because patient was also commitable under the Retarded Citizens Act; therefore, remand for further proceedings would be required to determine if patient was no longer mentally ill to extent that he was likely to injure self or others if not hospitalized, in which case court could proceed to disposition solely under the Retarded Citizens Act, or if diagnosis did not permit release, in which case court would determine whether patient could be treated under both the Ervin Act and the Retarded Citizens Act. D.C. Code 1981, §§ 6-1901 et seq., 21-501 et seq., 21-546, 21-548. In re Hanna, 484 A.2d 537, 1984 D.C. App. LEXIS 538 (1984).

Mental illness.

Where proposed definition of mental illness for civil commitment purposes had excluded mental deficiency but version which was enacted by Congress included mental deficiency within definition of mental illness, such enactment expressed awareness that mental retardation and mental illness or disease are not mutually exclusive conditions. D.C. Code §§ 21-501 to 21-592, 21-1101 to 21-1123, 24-301(d). United States v. Jackson, 553 F.2d 109, 1976 U.S. App. LEXIS 5752 (C.A.D.C. 1976).

In order to warrant civil commitment, it is not essential that illness fit specifically into any of various classes of mental illnesses recognized by American Psychiatric Association. D.C. Code §§ 21-501, 21-545(b). Bolton v. Harris, 395 F.2d

642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

To sustain a civil commitment under District of Columbia Code it is insufficient to find that a person is mentally deficient even when such condition is accompanied by some antisocial behavior, and government must prove by preponderance of evidence that individual suffers from mental illness, whether related or unrelated to mental deficiency, and that danger-productive behavior of individual results from mental illness. D.C. Code 1961, §§ 21-501, 21-545(b). In re Alexander, 372 F.2d 925, 1967 U.S. App. LEXIS 7643 (C.A.D.C. 1967).

To extent that district court's instruction reflected government trial counsel's view that mental deficiency in and of itself constituted a mental illness within District of Columbia statute relating to civil commitment instruction was improper, but when court's charge was taken in its entirety the jury had been clearly and properly informed they could not commit person simply because of his mental deficiency. D.C. Code 1961, §§ 21-501, 21-545(b), 21-562. In re Alexander, 372 F.2d 925, 1967 U.S. App. LEXIS 7643 (C.A.D.C. 1967).

Psychosis is mental disturbance which may or may not have physiological roots but is considered disease for purpose of Hospitalization of the Mentally Ill Act. D.C. Code 1981, §§ 21-501 to 21-592. In re Rosell, 547 A.2d 180, 1988 D.C. App. LEXIS 146 (1988).

Hospitalization of the Mentally Ill Act did not limit definition of mental illness to psychosis but, rather, encompassed treatment for those with personality disorders. D.C. Code 1981, §§ 21-501 to 21-592. In re Rosell, 547 A.2d 180, 1988 D.C. App. LEXIS 146 (1988).

Physician.

For purposes of Hospitalization of the Mentally Ill Act, "physician", who may file an application for emergency hospitalization, is someone who acts as more than mere member of medical profession and must possess patient-oriented role identification. D.C. Code 1981, §§ 21-501, 21-592. In re Rosell, 547 A.2d 180, 1988 D.C. App. LEXIS 146 (1988).

In process of petitioning for involuntary commitment of individual, hospital superintendent was not, merely by virtue of being physician himself, required to personally conduct examination of individual within 72 hours prior to making petition; petition, accompanied by certificate of physician who actually did conduct examination, was sufficient under statutes. D.C. Code 1981, §§ 21-501, 21-521 to 21-523, 21-524(b), 21-541(a), (a)(1), (a)(2)(A), 21-582(a, b). Dobbs v. Duncan, 458 A.2d 719, 1983 D.C. App. LEXIS 344 (1983).

Purposes.

The fundamental goal of the Hospitalization of the Mentally Ill Act was to return the mentally ill through care and treatment to a full and productive life in the community as soon as possible, given the patients' conditions. D.C. Code § 21-501 et seq. Dixon v. Weinberger, 405 F. Supp. 974, 1975 U.S. Dist. LEXIS 14644 (1975).

The two legal foundations for the governmental exercise of authority to confine the mentally ill are the police power and parens patriae power. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

The 1964 revision of the District of Columbia's civil commitment laws had primary purpose to safeguard constitutional rights of the mentally ill, i.e., to assure fair commitment and release procedures and adequate treatment during confinement. D.C. Code § 21-501 et seq. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

Purpose of civil commitment proceeding is not to decide whether a person has engaged in legislatively condemned conduct, but to determine whether he is mentally ill and likely to be a danger to himself or others. D.C. Code §§ 21-501 et seq., 21-521, 21-545(b). In re Lomax, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

To allow government an appeal from dismissal of judicial hospitalization petition does not frustrate the purposes of the Hospitalization of the Mentally Ill Act. D.C. Code §§ 11-721, 21-501 et seq. In re Lomax, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

Validity of related provisions.

Provisions of District of Columbia code governing involuntary detention and commitment of mentally ill persons on federal reservations in metropolitan District of Columbia are not so inconsistent with preceding provisions governing commitments in District of Columbia as to deprive an individual of due process and equal protection when committed pursuant to authority of provisions governing federal reservations. D.C. Code §§ 21-501 et seq., 21-901 et seq.; U.S. Const. Amend. 5. Medynski v. Margolis, 389 F. Supp. 743, 1975 U.S. Dist. LEXIS 14458 (1975).

Fact that Congress has legislated two statutes for detaining mentally ill persons, one applicable to the metropolitan District of Columbia area containing federal reservations and one applicable to the District of Columbia, does not present a constitutionally suspect situation, inasmuch as the District of Columbia is neither a state nor territory, but a federal enclave, housing the federal government, and Congress may legislate a detention statute applicable only within the District. D.C. Code §§ 21-501 et seq., 21-901 et seq.; U.S. Const. Amend. 5. Medynski v. Margolis, 389 F. Supp. 743, 1975 U.S. Dist. LEXIS 14458 (1975).

§ 21-501.01. Qualified psychologists.

(a) Qualified psychologists are subject to the restrictions and qualifications for practice contained in the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.01 et seq.).

(b) Whenever a qualified psychologist has the responsibility for the voluntary, nonprotesting, emergency, or court-ordered admission or hospitalization of a person who is mentally ill, that qualified psychologist or the provider shall, prior to or at the time of admission or commitment, identify a psychiatrist or other appropriate physician who shall be responsible for the medical evaluation and medical management of the person who is mentally ill during the period in which the person is receiving treatment from that provider. The qualified psychologist may be responsible for all other evaluation and management of the mental health services or mental health services or supports for the person who is mentally ill.

(Feb. 24, 1984, D.C. Law 5-48, § 11(c), 30 DCR 5778; Apr. 30, 1988, D.C. Law 7-104, § 6(d), 35 DCR 147; Apr. 4, 2003, D.C. Law 14-283, § 2(c), 50 DCR 917.)

Prior Codifications. — 1981 Ed., § 21-501.1.

Effect of amendments. — D.C. Law 14-283 rewrote subsec. (b) which had read as follows: "(b) Whenever a qualified psychologist may have the responsibility for the voluntary, nonprotesting, emergency, or court-ordered hospitalization of a mentally ill patient, that qualified psychologist or the hospital shall, prior to or at the time of hospital admission, identify a psychiatrist or other appropriate physician with admitting privileges at the hospital who shall be responsible for the medical evaluation and medical management of the patient for the duration of the patient's hospitalization. The qualified psychologist shall be responsible for all other evaluation and management of the patient.

Temporary Amendment of Section. — Section 2(c) of D.C. Law 14-131 amended subsec. (b) to read as follows:

"(b) Whenever a qualified psychologist may have the responsibility for the voluntary, nonprotesting, emergency, or court-ordered admission or hospitalization of a person who is mentally ill, that qualified psychologist or the provider shall, prior to or at the time of admission or commitment, identify a psychiatrist or other appropriate physician who shall be responsible for the medical evaluation and medical management of the person who is mentally ill during the period in which the person is receiving treatment from that provider. The qualified psychologist shall be responsible for all other evaluation and management of the mental health services or mental health supports for the person who is mentally ill."

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(c) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(c) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(c) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(c) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 21-501.

Legislative history of Law 7-104. — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 21-501.

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

Editor's notes. — Section 33(b) of D.C. Law 15-354 provided that the section designation of § 21-501.1 of the District of Columbia Official Code is redesignated as § 21-501.01.

§ 21-502. Commission on Mental Health; composition; appointment and terms of members; organization; chairperson; salaries.

(a) The Commission on Mental Health is continued. The Chief Judge of the Superior Court of the District of Columbia shall appoint the members of the Commission, and the Commission shall be composed of 9 members and an alternate chairperson. One member shall be a magistrate judge of the Court appointed pursuant to title 11, District of Columbia Official Code, who shall be a member of the bar of the Court and has engaged in active practice of law in the District of Columbia for a period of at least 5 years prior to his or her appointment. The magistrate judge shall be the Chairperson of the Commission and act as the administrative head of the Commission. The Chairperson shall preside at all hearings and direct all of the proceedings before the Commission. Eight members of the Commission shall be psychiatrists or qualified psychologists, as those terms are defined in section 21-501, who have not had less than 5 years of experience in the diagnosis and treatment of mental illness.

(b)(1) Appointment of members of the Commission shall be for terms of 4 years.

(2) The initial appointment of a psychiatrist or a qualified psychologist shall be for a probationary period of one year. After the initial one-year probationary appointment, subsequent appointments of the psychiatrist or qualified psychologist shall be for terms of 4 years.

(c) The psychiatrist or qualified psychologist members of the Commission shall serve on a part-time basis and shall be rotated by assignment of the Chief Judge of the Court, so that at any one time the Commission shall consist of the Chairperson and 2 members, each of whom is either a psychiatrist or a qualified psychologist. Members of the Commission who are psychiatrists or qualified psychologists may practice their professions during their tenures of office, but may not participate in the disposition of a case of a person in which they have rendered professional service or advice.

(d) The Chief Judge of the Court shall appoint a magistrate judge of the Court to serve as an alternate Chairperson of the Commission. The alternate Chairperson shall serve on a part time basis and act as Chairperson in the absence of the permanent Chairperson.

(e) The rate of compensation for the members of the Commission who are psychiatrists or qualified psychologists shall be fixed by the Executive Officer of the Court.

(Sept. 14, 1965, 79 Stat. 751, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(c)(1); Oct. 30, 1986, Pub. L. 99-591, title I, § 154, 100 Stat. 3341-356; Apr. 4, 2003 (Dec. 10, 2004), D.C. Law 14-283, § 2(d), 50 DCR 917; Dec. 10, 2004, 118 Stat. 3472, Pub. L. 108-450, § 2(a).)

Prior Codifications. — 1981 Ed., § 21-502. 1973 Ed., § 21-502.

Effect of amendments. — Pub. L. 99-591, in subsec. (a), rewrote the last sentence which read: "Eight members of the Commission shall be physicians who have been practicing medicine in the District of Columbia and who have had not less than five years' experience in the

diagnosis and treatment of mental illnesses."; and rewrote subsec. (c) which had read:

"(c) The physician-members of the Commission shall serve on a part-time basis and shall be rotated by assignment of the Chief Judge of the court, so that at any one time the Commission shall consist of the Chairman and two physician-members. Physician-members of the Commission may practice their profession during their tenure of office, but may not participate in the disposition of the case of a person in which they have rendered professional service or advice."

Pub. L. 108-450 rewrote the section.

Temporary Amendment of Section. — Section 2(d) of D.C. Law 14-131, in subsec. (a), in the last sentence, inserted "or qualified psychologists" after "Eight members of the Commission shall be physicians"; in subsec. (c), in the first sentence, substituted "The physician-members and psychologist-members" for "The physician-members", and substituted "2 members, each of whom is either a physician or a qualified psychologist" for "two physician-members", and in the last sentence, substituted " Physician-members and psychologist-members" for "Physician-members".

Section 4 of D.C. Law 14-131 provided: "Sec. 4. Applicability. Section 2(d), (k)(2), (m), (q)(3) and (4), (s), and (t) shall apply upon the enactment of legislation by the United States Congress that states the following: Notwithstanding any other law, section 2(d), (k)(2), (q)(3) and (4), (s), and (t) of the Mental Health Commitment Temporary Act of 2002, adopted by the Council of the District of Columbia, is enacted into law."

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition of applicability provision for § 2(d), (k)(2), (m), (q)(3) and (4), (s), and (t) of D.C. Act 14-265, see § 4 of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(d) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(d) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section applicable upon enactment of certain legislation by the United States Congress, see §§ 2(d) and 3 of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see §§ 2(d) and (3) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

References in text. — The Classification Act of 1949, as amended, referred to in the first sentence in subsection (e) of this section, was repealed by the Act of September 6, 1966, 80 Stat. 632, Pub. L. 89-554, § 8(a).

Editor's notes. — Governing Body of the Commission on Mental Health Services established: See Mayor's Order 88-168, July 13, 1988.

Section 2(c) of Pub. L. 108-450, 118 Stat. 3472, the District of Columbia Mental Health Civil Commitment Modernization Act of 2004, provided:

"(c) Effective date; Transition for current members.—The amendments made by this section shall take effect on the date of the enactment of this Act, except nothing in this section or the amendments made by this section may be construed to affect the appointment or term of service of any individual who serves as a member or alternate member of the Commission on Mental Health (including an individual who serves as the Chairperson or alternate Chairperson of the Commission) on such date."

Applicability of §§ 2(d), (e), (l)(2), (n), (r)(3) and (4), (t), and (u) of Law 14-283: Section 3 of Law 14-283 provided that section 2(d), (e), (l)(2), (n), (r)(3) and (4), (t), and (u) shall apply upon the enactment of legislation by the United States Congress that states the following:

"Notwithstanding any other law, section 2(d), (e), (l)(2), (r)(3) and (4), (t), and (u) of the Mental Health Civil Commitment Act of 2002, adopted by the Council of the District of Columbia, is enacted into law."

CASE NOTES

ANALYSIS

Access to records and transcripts.
In general.
Physician members.
Private litigation.

Access to records and transcripts.

Fact that superior court mental health rule placed burden of proof on government did not, by negative implication, preclude private participation to facilitate the governmental determination by jury and trial court; likewise, rule limiting access to Mental Health Commission transcripts did not address issue of proper parties to an involuntary civil commitment proceeding, and, in any event, family members,

the most likely private petitioners, were granted access to such transcripts, and trial court was empowered to extend access to others. D.C. Code SCR, Mental Health Rules 5(a), 11(c). In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

In general.

Imposition of receivership on Commission on Mental Health Services (CMHS) of District of Columbia was appropriate and only remaining remedy available to enforce court orders in 22-year-old class action suit requiring integrated community based mental health treatment for class members who needed services short of hospitalization. Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, §§ 2 et seq., 2(b)(1), 24 U.S.C. §§ 225 et seq., 225(b)(1); D.C. Code 1981, § 21-501 et seq. Dixon v. Barry, 967 F. Supp. 535, 1997 U.S. Dist. LEXIS 8692 (1997).

Physician members.

Physician-member of the Commission on Mental Health who participated in recommending that an individual should be hospitalized under statutory emergency provision is not a "physician of the person in question" who may file an application for emergency hospitalization. D.C. Code §§ 21-502(c), 21-521. Williams v. Meredith, 407 A.2d 569, 1979 D.C. App. LEXIS 477 (1979).

Private litigation.

When corporation counsel elects not to proceed with judicial stage of an involuntary civil commitment proceeding, court may permit private petitioner, through his or her counsel, to press case for commitment, since there is no statutory or constitutional command forbidding such. D.C. Code § 21-501 et seq. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

Private litigation of civil commitments does not violate constitutional separation of powers, given fact that, because civil commitment scheme permits, but does not require, the participation by a corporation counsel, there is no infringement upon an exclusive, executive prerogative. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

Private litigation of civil commitment, absent participation of a public prosecutor, did not adversely affect committee's legitimate liberty interest without an offsetting benefit to public, given fact that committee failed to demonstrate alleged evils of private litigation of failing to provide "screening" and "compromise" functions inherent in prosecutorial discretion, of failing upon findings of mental illness and dangerousness, to utilize all available resources to provide least restrictive, appropriate treatment and of private petitioner's self-interest, possibly vindictive motivation. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

§ 21-503. Examinations and hearings; subpoenas; witnesses; place.

(a) The Commission shall examine alleged mentally ill persons, inquire into their affairs and the affairs of persons who may be legally liable for their support, and make reports and recommendations to the court.

(b) Except as otherwise provided by this chapter, the Commission may conduct its examinations and hearings either at the courthouse or elsewhere at its discretion. The court may issue subpoenas at the request of the Commission returnable before the Commission, for the appearance of the alleged mentally ill person, witnesses, and persons who may be liable for his support. Commission members who are psychiatrists or qualified psychologists, are competent and compellable witnesses at any trial, hearing or other proceeding conducted pursuant to this chapter and the physician- or psychologist-patient privilege is not applicable.

(Sept. 14, 1965, 79 Stat. 752, Pub. L. 89-183, § 1; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(5), 30 DCR 5778; Apr. 30, 1988, D.C. Law 7-104, § 6(e), 35 DCR 147; Apr. 4, 2003 (Dec. 10, 2004), D.C. Law 14-283, § 2(e), 50 DCR 917; Dec. 10, 2004, 118 Stat. 3473, Pub. L. 108-450, § 3.)

Prior Codifications. — 1981 Ed., § 21-503. 1973 Ed., § 21-503.

Effect of amendments. — Pub. L. 108-450, in subsec. (b), substituted "Commission mem-

bers who are psychiatrists or qualified psychologists" for "The Commission, or any of the members thereof,"

Emergency legislation. — For temporary (90 day) amendment of section applicable upon enactment of certain legislation by the United States Congress, see §§ 2(e) and 3 of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(e) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 21-501.

Legislative history of Law 7-104. — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 21-501.

Editor's notes. — Applicability of §§ 2(d), (e), (l)(2), (n), (r)(3) and (4), (t), and (u) of Law 14-283: Section 3 of Law 14-283 provided that section 2(d), (e), (l)(2), (n), (r)(3) and (4), (t), and (u) shall apply upon the enactment of legislation by the United States Congress that states the following: "Notwithstanding any other law, section 2(d), (e), (l)(2), (r)(3) and (4), (t), and (u) of the Mental Health Civil Commitment Act of 2002, adopted by the Council of the District of Columbia, is enacted into law."

CASE NOTES

ANALYSIS

Expert witnesses.
Subpoena.

Expert witnesses.

Trial court's procedural ruling that only a psychiatrist or psychologist could testify on the issue of dangerousness in proceedings seeking involuntary hospitalization, such that social worker proffered as an expert by government was categorically not qualified, was a fundamental procedural question the government could appeal; trial court's categorical ruling essentially dismissed the case for want of prosecution. In re Wyler, 46 A.3d 396, 2012 D.C. App. LEXIS 306 (2012).

Motion to exclude all expert testimony on the issue of future dangerousness to self or others in a civil commitment proceeding denied. In re Banks, 114 WLR 1857 (Super. Ct. 1986).

Subpoena.

Before subpoena may issue at its request on private, non-emergency petition for judicial hospitalization, Commission on Mental Health must test sufficiency of petition and obtain additional information, if necessary, so that it can then examine person alleged to be mentally ill and hold hearing. D.C. Code 1981,§ 21-503(b). In re Johnson, 699 A.2d 362, 1997 D.C. App. LEXIS 186 (1997).

In context of private, non-emergency petition for judicial hospitalization, there must be opportunity to challenge subpoena ordering respondent to submit to psychiatric examination at Commission of Mental Health; trial court has discretion to determine scope of hearing, including whether further evidence is required, consistent with constitutional considerations of privacy and liberty and statutory mandate that Commission undertake prompt examination. D.C. Code 1981, § 21-503. In re Johnson, 699 A.2d 362, 1997 D.C. App. LEXIS 186 (1997).

Subchapter II. Voluntary and Nonprotesting Hospitalization.

§ 21-511. Voluntary hospitalization and treatment.

(a) A person may apply to a public or private hospital, the Department, or any mental health provider in the District of Columbia to become a voluntary patient for the purposes of observation, diagnosis, and care and treatment of a mental illness. Upon the request of a person 18 years of age or over, or, in the case of a person under 18 years of age, of the person's spouse, parent, or legal guardian, the administrator of the public hospital to which application is made shall, or the administrator of a private hospital to which application is made may, admit the person as a voluntary patient to the hospital for the purposes described in this section, in accordance with this chapter, if an examination by an admitting psychiatrist or an admitting qualified psychologist reveals the need for hospitalization.

(b) If an examination reveals that the person requesting admission is not in need of hospitalization but is in need of outpatient treatment, the administrator of the hospital to which the application was made, or his designee, shall facilitate the admission of the person for voluntary outpatient treatment to the Department, a core services agency, or another provider. A person who is under 18 years of age may, consistent with the provisions of the Mental Health Service Delivery Reform Act of 2001, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code § 7-1131.01 et seq.), seek and consent to outpatient mental health services and mental health supports.

(Sept. 14, 1965, 79 Stat. 752, Pub. L. 89-183, § 1; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(6), 30 DCR 5778; Apr. 4, 2003, D.C. Law 14-283, § 2(f), 50 DCR 917.)

Prior Codifications. — 1981 Ed., § 21-511. 1973 Ed., § 21-511.

Effect of amendments. — D.C. Law 14-283 rewrote the section which had read as follows: "§ 21-511. Voluntary hospitalization." "A person may apply to a public or private hospital in the District of Columbia for admission to the hospital as a voluntary patient for the purposes of observation, diagnosis, and care and treatment of a mental illness. Upon the request of such a person 18 years of age or over, or, in the case of a person under 18 years of age, of his spouse, parent, or legal guardian, the administrator of the public hospital to which application is made shall, if an examination by an admitting psychiatrist or an admitting qualified psychologist reveals the need for hospitalization, or the administrator of the private hospital to which application is made may, admit the person as a voluntary patient to the hospital for the purposes described by this section, in accordance with this chapter."

Temporary Amendment of Section. — Section 2(e) of D.C. Law 14-131 amended this section to read as follows:

"§ 21-511. Voluntary hospitalization and treatment.

"(a) A person may apply to a public or private hospital, the Department, or any mental health provider in the District of Columbia to become a voluntary patient for the purposes of observation, diagnosis, and care and treatment of a mental illness. Upon the request of a person 18 years of age or over, or, in the case of a person under 18 years of age, of his spouse, parent, or legal guardian, the administrator of the public hospital to which application is made shall, or the administrator of a private hospital to which application is made may, admit the person as a voluntary patient to the hospital for the purposes described in this section, in accordance with this chapter, if an examination by an admitting psychiatrist or an admitting qualified psychologist reveals the need for hospitalization.

"(b) If an examination reveals that the person requesting admission is not in need of hospitalization but is in need of outpatient treatment, the administrator of the hospital to which the application was made, or his designee, shall facilitate the admission of the person for voluntary outpatient treatment to the Department, a core services agency, or another provider. A person who is under 18 years of age may, consistent with the provisions of the Mental Health Service Delivery Reform Act of 2001, effective December 18, 2001 (D.C. Law 14-56; 48 DCR 7674), seek and consent to outpatient mental health services and mental health supports."

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(e) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(f) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(e) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(f) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 21-501.

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

CASE NOTES

ANALYSIS

Change from voluntary to involuntary commitment.
Children and minors.
Liability for hospitalization and treatment.

Change from voluntary to involuntary commitment.

Status of inpatient at mental hospital could be changed from voluntary to involuntary; patient was subjected to arrest warrant for sexually assaulting hospital employee, found to be mentally ill, incompetent to stand trial and danger to himself and others, and continued to resist treatment by proclaiming that he was not mentally ill, even as he began requiring supervision to ensure that he took his medication and did not engage in violent, unprovoked sexual behavior. D.C. Code 1981, § 21-541. In re Clark, 700 A.2d 781, 1997 D.C. App. LEXIS 230 (1997).

Equal protection rights of voluntary patient in mental hospital were not violated when he was converted to involuntary inpatient status after he exposed himself to counselor and attempted to assault her; he was afforded same arrest and commitment procedure as any person subject to petition for judicial hospitalization. D.C. Code 1981, § 21-541. In re Clark, 700 A.2d 781, 1997 D.C. App. LEXIS 230 (1997).

Despite concern that patient seeking voluntary commitment might not have wanted to remain in hospital once he became sober, involuntary hospitalization of patient violated section of the Hospitalization of the Mentally Ill Act providing that qualifying individuals seeking hospitalization for treatment of mental illness must be admitted on voluntary basis, and thus, patient was entitled to have hospital record amended to indicate that his commitment was voluntary rather than involuntary, where patient went to see psychiatric, outpatient counselor with whom he had long-standing relationship to communicate need for help and patient informed counselor that he wanted to be admitted to hospital as voluntary patient. D.C. Code 1981, §§ 21-501 et seq., 21-511, 21-512. In re Blair, 510 A.2d 1048, 1986 D.C. App. LEXIS 361 (1986).

Children and minors.

Issue of validity of procedures under which child had been voluntarily admitted to mental health institution by her mother were not capable of repetition, for purposes of avoiding mootness of child's habeas corpus petition following her release, where she had achieved an age which deprived her parents of authority to hospitalize her under the statute and she was thus no longer at risk of a similar hospitalization against her will. D.C. Code 1981, § 21-511. Hardesty v. Draper, 687 A.2d 1368, 1997 D.C. App. LEXIS 9 (1997).

Where child who was voluntarily admitted to mental institution by her mother was released from institution before she filed appeal in habeas corpus proceeding in which she challenged admission procedures and had since reached the age of majority, appeal was moot, as court could not grant relief by rewriting history and obliterating the fact that she was hospitalized for 30 days. D.C. Code 1981, § 21-511. Hardesty v. Draper, 687 A.2d 1368, 1997 D.C. App. LEXIS 9 (1997).

Liability for hospitalization and treatment.

Statute placing responsibility on the District of Columbia to pay for the care and treatment of its residents who were mentally ill and indigent did not place a duty on the federal institution where the indigent was placed to transfer the indigent to a Veterans Administration or military facility. D.C. Code §§ 21-586, 32-401, 32-405. District of Columbia v. Moxley, 471 F. Supp. 777, 1979 U.S. Dist. LEXIS 12753 (1979).

Superior Court had authority under the Ervin Act to order District of Columbia to pay for civil committee's care outside of District. D.C. Code 1981, §§ 21-501, 21-511 to 21-513, 21-545(b), 21-586. In re Myrick, 624 A.2d 1222, 1993 D.C. App. LEXIS 125 (1993).

§ 21-512. Release of voluntary patients.

(a) A person accepted for voluntary treatment by a hospital, the Department, or a mental health provider, pursuant to section 21-511 may, at any time, if the person is 18 years of age or over, obtain his or her release from the hospital or other treatment by filing a written request with the chief of service or, in the case of the Department, the chief clinical officer. Within a period of 48 hours after the receipt of the request, the chief of service or the chief clinical officer shall ensure that discharge planning is completed and release the person making the request. A person admitted into treatment pursuant to

section 21-511 who is under 18 years of age may, at any time, obtain his or her release from the hospital or other treatment in the same manner, upon the written request of the person's spouse or domestic partner, parent, or legal guardian. A person under 18 years of age who has sought voluntary outpatient treatment without the consent of a parent or legal guardian may obtain his or her release from that treatment by filing a written request with the chief of service or chief clinical officer.

(b) When the chief of service or chief clinical officer determines that the person voluntarily receiving treatment pursuant to section 21-511 has recovered or that continued treatment of the person is no longer beneficial to the person, or advisable, the chief of service or chief clinical officer may discharge the person from the hospital or from other treatment.

(Sept. 14, 1965, 79 Stat. 752, Pub. L. 89-183, § 1; Apr. 4, 2003, D.C. Law 14-283, § 2(g), 50 DCR 917; Sept. 12, 2008, D.C. Law 17-231, § 22(b), 55 DCR 6758.)

Prior Codifications. — 1981 Ed., § 21-512. 1973 Ed., § 21-512.

Effect of amendments. — D.C. Law 14-283 rewrote the section.

D.C. Law 17-231, in subsec. (a), substituted "spouse or domestic partner" for "spouse".

Temporary Amendment of Section. — Section 2(f) of D.C. Law 14-131 amended this section to read as follows:

"(a) A person accepted for voluntary treatment by a hospital, the Department, or a provider, pursuant to section 21-511 may, at any time, if the person is 18 years of age or over, obtain his release from the hospital or other treatment by filing a written request with the chief of service or, in the case of the Department, the chief clinical officer. Within a period of 48 hours after the receipt of the request, the chief of service or the chief clinical officer shall ensure that discharge planning is completed and release the person making the request. A person admitted into treatment pursuant to section 21-511 who is under 18 years of age may, at any time, obtain his release from the hospital or other treatment in the same manner, upon the written request of the person's spouse, parent, or legal guardian. A person under 18 years of age who has sought voluntary outpatient treatment without the consent of a parent or legal guardian may obtain his release from that treatment by filing a written request with the chief of service or chief clinical officer.

"(b) When the chief of service or chief clinical officer determines that the person voluntarily receiving treatment pursuant to section 21-511 has recovered or that continued treatment of the person is no longer beneficial to the person, or advisable, the chief of service or chief clinical officer may discharge the person from the hospital or from other treatment."

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(f) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(f) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(g) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(g) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 21-501.

CASE NOTES

ANALYSIS

Conversion of voluntary to involuntary commitment.
Outpatients.
Rights of released patients.

Conversion of voluntary to involuntary commitment.

Evidence supported finding that patient, who had submitted himself to voluntary inpatient treatment, was not amenable to treatment at the time he was transferred to second hospital, and thus patient's status could be changed from voluntary to involuntary under the Ervin Act; physician testified that patient was not taking his medication consistently, patient admitted that he does not take a majority of the medications prescribed to him, patient had a long history of mental illness, and he had been taken into an emergency psychiatric program by the police roughly ten times in the last eight years. In re Peterson, 984 A.2d 192, 2009 D.C. App. LEXIS 610 (2009).

Status of inpatient at mental hospital could be changed from voluntary to involuntary; patient was subjected to arrest warrant for sexually assaulting hospital employee, found to be mentally ill, incompetent to stand trial and danger to himself and others, and continued to resist treatment by proclaiming that he was not mentally ill, even as he began requiring supervision to ensure that he took his medication and did not engage in violent, unprovoked sexual behavior. D.C. Code 1981, § 21-541. In re Clark, 700 A.2d 781, 1997 D.C. App. LEXIS 230 (1997).

Equal protection rights of voluntary patient in mental hospital were not violated when he was converted to involuntary inpatient status after he exposed himself to counselor and attempted to assault her; he was afforded same arrest and commitment procedure as any person subject to petition for judicial hospitalization. D.C. Code 1981, § 21-541. In re Clark, 700 A.2d 781, 1997 D.C. App. LEXIS 230 (1997).

Despite concern that patient seeking voluntary commitment might not have wanted to remain in hospital once he became sober, involuntary hospitalization of patient violated section of the Hospitalization of the Mentally Ill Act providing that qualifying individuals seeking hospitalization for treatment of mental illness must be admitted on voluntary basis, and thus, patient was entitled to have hospital record amended to indicate that his commitment was voluntary rather than involuntary, where patient went to see psychiatric, outpatient counselor with whom he had long-standing relationship to communicate need for help and patient informed counselor that he wanted to be admitted to hospital as voluntary patient. D.C. Code 1981, §§ 21-501 et seq., 21-511, 21-512. In re Blair, 510 A.2d 1048, 1986 D.C. App. LEXIS 361 (1986).

Outpatients.

Treatment of patient subject to outpatient commitment as involuntarily hospitalized inpatient violated the Hospitalization of the Mentally Ill Act where patient was held for ten days without judicial hearing to determine whether probable cause existed for his hospitalization. D.C. Code 1981, §§ 21-501 to 21-592. In re Feenster, 561 A.2d 997, 1989 D.C. App. LEXIS 136 (1989).

Rights of released patients.

Regardless of source of hospital's authority to release committed inpatients, patient on convalescent leave has protected interest in remaining in community. U.S.C. Const.Amend. 14. In re Plummer, 608 A.2d 741, 1992 D.C. App. LEXIS 130 (1992).

Once its civilly committed adult was released by hospital to live in community for indefinite period of time on convalescent leave, he became de facto outpatient, entitled to same due process rights as patient originally committed as outpatient. U.S. Const. Amend. 5; D.C. Code 1981, § 21-545(b). In re Plummer, 608 A.2d 741, 1992 D.C. App. LEXIS 130 (1992).

§ 21-513. Hospitalization of nonprotesting persons.

A friend or relative of a person believed to have a mental illness may apply on behalf of that person to the admitting psychiatrist or the admitting qualified psychologist of a hospital by presenting the person, together with a referral from a practicing physician or qualified psychologist. For the purpose of examination and treatment, a private hospital may accept a person so presented and referred, and a public hospital shall accept a person so presented and referred, if, in the judgment of the admitting psychiatrist or the admitting qualified psychologist, the need for examination and treatment is indicated on the basis of the person's mental condition and the person signs a

statement at the time of the admission stating that he does not object to hospitalization. The statement shall contain in simple, nontechnical language the fact that the person is to be hospitalized and a description of the right to release set out in section 21-514. The admitting psychiatrist or the admitting qualified psychologist may admit a person so presented, without referral from a practicing physician or qualified psychologist, if the need for an immediate admission is apparent to the admitting psychiatrist or the admitting qualified psychologist upon preliminary examination.

(Sept. 14, 1965, 79 Stat. 753, Pub. L. 89-183, § 1; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(7), 30 DCR 5778; Apr. 24, 2007, D.C. Law 16-305, § 35(a)(2), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 21-513. 1973 Ed., § 21-513.

Effect of amendments. — D.C. Law 16-305 substituted "have" for "be suffering from".

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 21-501.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 21-501.

CASE NOTES

In general.

Superior Court had authority under the Ervin Act to order District of Columbia to pay for civil committee's care outside of District. D.C. Code 1981, §§ 21-501, 21-511 to 21-513, 21-545(b), 21-586. In re Myrick, 624 A.2d 1222, 1993 D.C. App. LEXIS 125 (1993).

§ 21-514. Release of patients hospitalized under section 21-513.

Unless proceedings for hospitalization under court order have been initiated under subchapter IV of this chapter, a hospital, upon the written request of a patient hospitalized pursuant to section 21-513, shall immediately release him.

(Sept. 14, 1965, 79 Stat. 753, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-514. 1973 Ed., § 21-514.

Subchapter III. Emergency Hospitalization.

§ 21-521. Detention of persons believed to be mentally ill; transportation and application to hospital.

An accredited officer or agent of the Department of Mental Health of the District of Columbia, or an officer authorized to make arrests in the District of Columbia, or a physician or qualified psychologist of the person in question, who has reason to believe that a person is mentally ill and, because of the illness, is likely to injure himself or others if he is not immediately detained may, without a warrant, take the person into custody, transport him to a public or private hospital, or to the Department, and make application for his admission thereto for purposes of emergency observation and diagnosis. The

application shall reveal the circumstances under which the person was taken into custody and the reasons therefor.

(Sept. 14, 1965, 79 Stat. 753, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(c)(2); Feb. 24, 1984, D.C. Law 5-48,§ 11(a)(8), 30 DCR 5778; Apr. 30, 1988, D.C. Law 7-104, § 6(f), 35 DCR 147; Dec. 18, 2001, D.C. Law 14-56, § 116(g)(1), 48 DCR 7674; Apr. 4, 2003, D.C. Law 14-283, § 2(h), 50 DCR 917.)

Cross references. — Annulment of marriage, § 46-404.

Condemnation of insanitary buildings, appointment of guardian ad litem, see § 6-909.

Conservator, guardian in proceedings for appointment, see § 21-2041 et seq.

Emergency disclosure of mental health information, see § 7-1203.03.

Militia service exemption, see § 49-401.

Personal property schedule filing, persons under disability, see § 47-1601.

Physician or qualified psychologist related by blood or marriage to alleged mentally ill person, power to apply or certify mental status, see § 21-582.

Property of mentally ill persons, see § 21-2001 et seq.

Real estate leases, mentally ill person's rights, see § 42-3222 et seq.

Redemption from tax sale, removal of disability, see § 47-1304.

Release of dower, see § 19-107a.

St. Elizabeths Hospital, commitment of mentally ill persons, see §§ 21-901 et seq., 44-901 et seq.

Prior Codifications. — 1981 Ed., § 21-521. 1973 Ed., § 21-521.

Effect of amendments. — D.C. Law 14-56 substituted "Department of Mental Health" for "Department of Human Services".

D.C. Law 14-283 added ", or to the Department" after "or private hospital".

Temporary Amendment of Section. — Section 16(g)(1) of D.C. Law 14-51 substituted "Department of Mental Health" for "Department of Human Services" in the first sentence.

Section 19(b) of D.C. Law 14-51 provided that the act shall expire after 225 days of its having taken effect.

Section 2(g) of D.C. Law 14-131, in the first sentence, added ", or to the Department," following "or private hospital".

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 16(g)(1) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(g)(1) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 116(g)(1) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

For temporary (90 day) amendment of section, see § 2(g) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(g) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(h) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(h) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 21-501.

Legislative history of Law 7-104. — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 21-501.

Legislative history of Law 14-51. — Law 14-51, the "Department of Mental Health Establishment Temporary Amendment Act of 2001", was introduced in Council and assigned Bill No. 14-174, which was retained by Council. The Bill was adopted on first and second readings on April 3, 2001, and May 1, 2001, respectively. Signed by the Mayor on May 22, 2001, it was assigned Act No. 14-72 and transmitted to both Houses of Congress for its review. D.C. Law 14-51 became effective on October 30, 2001.

Legislative history of Law 14-56. — Law 14-56, the "Mental Health Service Delivery Reform Act of 2001", was introduced in Council and assigned Bill No. 14-136, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 26, 2001, and July 10, 2001, respectively. Signed by the Mayor on July 24,

2001, it was assigned Act No. 14-119 and transmitted to both Houses of Congress for its review. D.C. Law 14-56 became effective on December 18, 2001.

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

CASE NOTES

Analysis

Civil liability for wrongful detention.
Civil liability for wrongful death.
Constitutional rights of detainees.
Construction and application.
Construction with other statutes.
Conversion from voluntary to involuntary status.
Habeas corpus.
Likelihood of injury to self or others.
Outpatient recommitments.
Persons qualified to detain.
Presumptions and burden of proof.
Purposes.
Qualified physician examination.
Treatment and therapies.
Validity.
Validity of detention.

Civil liability for wrongful detention.

Fuller factual record was required to determine whether a private physician who took patient into custody for purpose of transporting her to a hospital for admission pursuant to involuntary commitment thereby acted under color of state law for purposes of suit brought under civil rights statute. 42 U.S.C. § 1983; D.C. Code 1981, § 21-521. Willacy v. Lewis, 598 F. Supp. 346, 1984 U.S. Dist. LEXIS 15703 (1984).

No state action within meaning of civil rights statute was involved in a private physician's execution of application of involuntary commitment of patient. 42 U.S.C. § 1983; D.C. Code 1981, § 21-521. Willacy v. Lewis, 598 F. Supp. 346, 1984 U.S. Dist. LEXIS 15703 (1984).

Hospital employee who alerted employee of Emergency Psychiatric Response Division (EPRD) of Commission on Mental Health Services to plaintiff's comments about suicide in telephone conversation, which led to involuntary hospitalization of plaintiff as potentially suicidal, could not be liable for negligence in individual capacity, since he merely asked mental health employee to monitor telephone call, and therefore, his actions were not proximate cause of plaintiff's harm. D.C. Code 1981, § 21-521. Magwood v. Giddings, 672 A.2d 1083, 1996 D.C. App. LEXIS 43 (1996).

Plaintiff's unsolicited statements during telephone conversation that she intended to kill herself, that she had made plans for her children's future care, that she had been reading books on suicide, and that she did not "feel like going on," as well as experience and training of employee of Emergency Psychiatric Response Division (EPRD) of Commission on Mental Health Services as mental health care provider objectively supported conclusion that plaintiff was mentally ill and in danger of harming herself; thus, EPRD employee who hospitalized plaintiff against her will acted under statute authorizing District agent to detain mentally ill and dangerous person, and was not liable for false imprisonment. D.C. Code 1981, § 21-521. Magwood v. Giddings, 672 A.2d 1083, 1996 D.C. App. LEXIS 43 (1996).

Plaintiff, who was involuntarily hospitalized as potentially suicidal by authorized District agents, could not prevail on claims of intentional infliction of emotional distress, negligence, or battery, where she failed to allege that agents used force above and beyond that necessary to lawfully detain her. D.C. Code 1981, § 21-521. Magwood v. Giddings, 672 A.2d 1083, 1996 D.C. App. LEXIS 43 (1996).

With all of the statutory protections built into this act, the fear of the isolated case of bad faith or malicious action in initiating commitment of an individual for alleged mental illness does not justify a qualified immunity approach, which may quell legitimate action of paramedical and medical personnel in far more cases where the failure to act will unduly expose the public or the individual to harm. Magwood v. Giddings, 122 WLR 241 (Super. Ct. 1993).

The required element of causation cannot be demonstrated in a claim against any party involved in the preliminary steps of a potential patient's confinement under this act, since an indispensable prerequisite to confinement for emergency observation and diagnosis is the certification by a psychiatrist of the hospital that there are reasonable grounds to believe the individual to be mentally ill and dangerous, that is likely to injure herself or others; this intervening action breaks the chain of causation as the basis for any civil liability. Magwood v. Giddings, 122 WLR 241 (Super. Ct. 1993).

Individual defendants, who were part of hospital staff, were immune from liability for claim of improper involuntary commitment by virtue of having absolute immunity under the statutory provisions and procedures of this act. Magwood v. Giddings, 122 WLR 241 (Super. Ct. 1993).

Civil liability for wrongful death.

Unsupported and conclusory assertion of psychiatric expert, to effect that reasonable physi-

cian would have undertaken additional efforts to persuade patient to agree to voluntary hospitalization after determining that he did not meet statutory criteria for involuntary hospitalization, including informing patient's wife of patient's suicidal ideation and enlisting her assistance in persuading him to agree to hospitalization, did not permit conclusion by preponderance of evidence that such efforts would have prevented patient's suicide six hours later, as required to establish causation in action for wrongful death. Garby v. George Washington Univ. Hosp., 886 A.2d 510, 2005 D.C. App. LEXIS 538 (2005).

Constitutional rights of detainees.

Although there was no arrest of person who was involuntarily detained on ground that he was mentally ill and likely to injure himself or others, he was "seized" within meaning of Fourth Amendment when he was taken into custody and involuntarily deprived of his liberty. D.C. Code §§ 21-521 to 21-525; U.S. Const. Amend. 4. In re Barnard, 455 F.2d 1370, 1971 U.S. App. LEXIS 6472 (C.A.D.C. 1971).

Because of the massive curtailment of liberty occasioned by civil commitment of any length, certain constitutional rights attach to civil commitment process including the Fifth Amendment right not to be so detained simply because one is "mentally ill." U.S. Const. Amend. 5. In re Barnard, 455 F.2d 1370, 1971 U.S. App. LEXIS 6472 (C.A.D.C. 1971).

Substantial measure of deference to psychiatric judgments was appropriate in determining whether to order defendant medicated involuntarily to make him competent to stand trial for murder and, thus, deference afforded such judgments did not deprive defendant of due process. D.C. Code 1981, § 21-521; U.S.C. Const.Amend. 5. Tran Van Khiem v. United States, 612 A.2d 160, 1992 D.C. App. LEXIS 218 (1992).

Involuntary civil commitment proceedings involve a potential deprivation of liberty which requires careful due process protection. U.S. Const. Amend. 14. In re Mendoza, 433 A.2d 1069, 1981 D.C. App. LEXIS 323 (1981).

Man, who had been charged with crime, committed to mental hospital due to incompetency to stand trial and found unlikely to regain his competency in the reasonable foreseeable future, was not denied equal protection by Government's delaying commencing civil commitment proceedings for 42 days after the finding was made, where subsequent periods of confinement were relatively brief, civil commitment was accomplished within three months of finding and court was acquainted with medical report conclusion that man would be dangerous to himself or others if released. D.C. Code §§ 21-521, 21-523 to 21-525, 21-541, 21-541(a), 21-542 to 21-545, 22-501, 22-507, 22-2307, 24-301(a); U.S. Const. Amend. 14. Thomas v. United States, 418 A.2d 122, 1980 D.C. App. LEXIS 333 (1980).

An involuntary civil commitment to a mental hospital constitutes a significant deprivation of liberty that requires due process protections. U.S. Const. Amend. 5. In re Nelson, 408 A.2d 1233, 1979 D.C. App. LEXIS 507 (1979).

Because liberty is jeopardized by the civil commitment procedure, demands of due process must be satisfied. D.C. Code § 21-501 et seq. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

While reliance upon labels of "civil" or "criminal" would be eschewed in determining applicability of constitutional protections to civil commitment proceedings, patient is not put in jeopardy by civil commitment proceedings aimed basically at treatment, rather than punishment, for the afflicted individual. D.C. Code § 21-501 et seq.; U.S. Const. Amend. 5. In re Lomax, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

Although there is nothing in the Hospitalization of the Mentally Ill Act which would prevent hospital from repeatedly filing new petitions for judicial hospitalization whenever it perceived that a person's mental condition warranted confinement, repetitious commencement of proceedings might reach a level of oppressiveness which would be violative of due process rights. D.C. Code § 21-501 et seq. In re Lomax, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

In an involuntary civil commitment trial, due process required proof beyond a reasonable doubt that respondent was mentally ill and, because of the illness, was likely to injure herself or other persons if allowed to remain at liberty. D.C. Code §§ 21-521, 21-541; U.S. Const. Amend. 5. In re Hodges, 325 A.2d 605, 1974 D.C. App. LEXIS 276 (1974).

Construction and application.

Physician's petition for judicial hospitalization of patient commenced the judicial proceedings so that detention of patient during course of proceedings was authorized even though petition was not filed until almost four weeks after patient had been admitted to hospital. D.C. Code 1961, §§ 21-521 to 21-523, 21-528, 21-541. In re Perry, 269 F. Supp. 729, 1967 U.S. Dist. LEXIS 8792 (D.D.C1967).

Court of Appeals construes Hospitalization of the Mentally Ill Act narrowly where its application results in curtailment of individual's liberty. D.C. Code 1981, §§ 21-501 to 21-592. In re Reed, 571 A.2d 801, 1990 D.C. App. LEXIS 59 (1990).

In hospital superintendent's action for judicial hospitalization of patient alleged to be mentally ill, patient's attorney is not free to follow a more lenient standard of conduct than government. D.C. Code § 21-501 et seq. In re

Lomax, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

Construction with other statutes.

Provisions of District of Columbia code governing involuntary detention and commitment of mentally ill persons on federal reservations in metropolitan District of Columbia are not so inconsistent with preceding provisions governing commitments in District of Columbia as to deprive an individual of due process and equal protection when committed pursuant to authority of provisions governing federal reservations. D.C. Code §§ 21-501 et seq., 21-901 et seq.; U.S. Const. Amend. 5. Medynski v. Margolis, 389 F. Supp. 743, 1975 U.S. Dist. LEXIS 14458 (1975).

Conversion from voluntary to involuntary status.

Evidence supported finding that patient, who had submitted himself to voluntary inpatient treatment, was not amenable to treatment at the time he was transferred to second hospital, and thus patient's status could be changed from voluntary to involuntary under the Ervin Act; physician testified that patient was not taking his medication consistently, patient admitted that he does not take a majority of the medications prescribed to him, patient had a long history of mental illness, and he had been taken into an emergency psychiatric program by the police roughly ten times in the last eight years. In re Peterson, 984 A.2d 192, 2009 D.C. App. LEXIS 610 (2009).

Habeas corpus.

A civil committee may challenge through habeas corpus any earlier commitment that may in some way operate to enhance a subsequent commitment being served at time of challenge. Bension v. Meredith, 455 F. Supp. 662, 1978 U.S. Dist. LEXIS 19102 (1978).

Habeas corpus is proper means for testing constitutionality of detention under civil commitment laws. Bension v. Meredith, 455 F. Supp. 662, 1978 U.S. Dist. LEXIS 19102 (1978).

Likelihood of injury to self or others.

Civil commitment is justified only where an individual is both mentally ill and dangerous to himself or others. Bension v. Meredith, 455 F. Supp. 662, 1978 U.S. Dist. LEXIS 19102 (1978).

When trial court becomes involved in process of committing person deemed to be dangerously mentally ill, its focus should be on present mental condition of person involved and whether or not probable cause exists to believe that person is likely to injure himself or others if not immediately detained, and defect in application itself should be taken into account insofar as it could bear upon reliability and integrity of application and information therein, but should not be treated as per se cause for immediate termination of proceedings and release of person involved no matter how dangerous to self or others. D.C. Code 1981, §§ 21-521, 21-524, 21-525. In re Herman, 619 A.2d 958, 1993 D.C. App. LEXIS 21 (1993).

Word "injure," within statute providing that person may be hospitalized for indeterminate period if it is found that, because of his mental illness, he is likely to injure himself or other persons if allowed to remain at liberty, implies an element of dangerousness. D.C. Code 1973, § 21-545(b). In re Mendoza, 433 A.2d 1069, 1981 D.C. App. LEXIS 323 (1981).

Involuntary civil commitment is appropriate when a fact finder determines, by clear and convincing evidence, that the subject is likely to cause injury to himself or others by criminal conduct or otherwise. D.C. Code 1973, § 21-545(b). In re Mendoza, 433 A.2d 1069, 1981 D.C. App. LEXIS 323 (1981).

In civil commitment proceedings, evidence was sufficient to support finding that paranoid schizophrenic who believed he was the president was likely to endanger himself and/or others. D.C. Code § 21-545(b). In re Nelson, 408 A.2d 1233, 1979 D.C. App. LEXIS 507 (1979).

Outpatient recommitments.

Trial court may authorize mentally ill outpatient's summary rehospitalization in certain situations without prior adversary hearing, provided the patient is detained only temporarily and the hospital complies with certain affidavit and notice requirements which are in harmony with the dictates of due process. D.C. Code 1981, §§ 21-501 et seq., 21-521, 21-522; U.S.C. Const.Amends. 5, 14. In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Hospital need not rely on emergency provisions of the District of Columbia Hospitalization of the Mentally Ill Act in accomplishing an involuntarily committed outpatient's return for brief reevaluation or treatment since resort to these procedures would be duplicative, the patient having already been lawfully committed. D.C. Code 1981, §§ 21-521, 21-528. In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Persons qualified to detain.

A physician who has reason to believe that his patient is mentally ill and, because of the illness, is likely to injure himself or others if he is not immediately detained is, under District of Columbia law, statutorily empowered, without a warrant, to take the patient into custody, transport him to a public or private hospital, and make application for his admission thereto for purposes of emergency observation and diagnosis. D.C. Code §§ 21-521, 21-522. Johnson

v. United States, 547 F.2d 688, 1976 U.S. App. LEXIS 6019 (C.A.D.C. 1976).

The imperfection of patient's initial admission to hospital for emergency psychiatric care by doctor who was not her physician did not impair validity of patient's continued detention where government met its burden of showing probable cause to believe that patient suffered from mental illness and was likely to injure herself if not retained. D.C. Code 1981, §§ 21-501 to 21-592. Johnson v. United States, 547 F.2d 688, 1976 U.S. App. LEXIS 6019 (C.A.D.C. 1976).

Presumptions and burden of proof.

Proof of mental illness and dangerousness in involuntary civil commitment proceedings must be beyond a reasonable doubt rather than by preponderance of evidence. D.C. Code §§ 21-521, 21-523, 21-524, 21-528, 21-545, 21-545(b); U.S. Const. Amends. 5, 14. In re Ballay, 482 F.2d 648, 1973 U.S. App. LEXIS 9680 (C.A.D.C. 1973).

Government has the initial burden of producing evidence showing probable cause justifying further detention of an involuntary mental patient. D.C. Code §§ 21-521 to 21-525. In re Barnard, 455 F.2d 1370, 1971 U.S. App. LEXIS 6472 (C.A.D.C. 1971).

The imperfection of patient's initial admission to hospital for emergency psychiatric care by doctor who was not her physician did not impair validity of patient's continued detention where government met its burden of showing probable cause to believe that patient suffered from mental illness and was likely to injure herself if not retained. D.C. Code 1981, §§ 21-501 to 21-592. In re Rosell, 547 A.2d 180, 1988 D.C. App. LEXIS 146 (1988).

When an individual is detained on an emergency basis prior to a judicial determination of a need for his involuntary hospitalization, the government has the burden of showing probable cause to justify detaining him. D.C. Code §§ 21-521 to 21-528. Williams v. Meredith, 407 A.2d 569, 1979 D.C. App. LEXIS 477 (1979).

Purposes.

Primary purpose of involuntary civil commitment is to provide psychiatric treatment to person in need of same, even though ancillary concern may be for state to protect its citizenry from the perceived dangers of the mentally ill. In re Snowden, 423 A.2d 188, 1980 D.C. App. LEXIS 397 (1980).

Purpose of civil commitment proceeding is not to decide whether a person has engaged in legislatively condemned conduct, but to determine whether he is mentally ill and likely to be a danger to himself or others. D.C. Code §§ 21-501 et seq., 21-521, 21-545(b). In re Lomax, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

Qualified physician examination.

Under District of Columbia law, the examination requirement preconditioning admission to and detention of suspected mental patient in hospital is imposed upon psychiatrist on duty at hospital and not upon the initiating physician who is clothed with a privilege immunizing his role as the agency by which such examinations become possible; thus, the United States, could not be held liable under Federal Tort Claims Act on claim of former Veterans Administration hospital patient that he had been committed to hospital upon application executed by Veterans Administration hospital physician without complying with reasonable medical standards of care required under circumstances then existing. D.C. Code §§ 21-521, 21-522; 18 U.S.C. § 294(d). Johnson v. United States, 547 F.2d 688, 1976 U.S. App. LEXIS 6019 (C.A.D.C. 1976).

When neither the validity of documents signed by physician and psychiatrist relating to emergency hospitalization of person who was alleged to be mentally ill nor the accuracy of the opinions and information in the documents was contested, there was an adequate basis for continuing the emergency hospitalization. D.C. Code §§ 21-521 to 21-525. In re Barnard, 455 F.2d 1370, 1971 U.S. App. LEXIS 6472 (C.A.D.C. 1971).

In process of petitioning for involuntary commitment of individual, hospital superintendent was not, merely by virtue of being physician himself, required to personally conduct examination of individual within 72 hours prior to making petition; petition, accompanied by certificate of physician who actually did conduct examination, was sufficient under statutes. D.C. Code 1981, §§ 21-501, 21-521 to 21-523, 21-524(b), 21-541(a), (a)(1), (a)(2)(A), 21-582(a, b). Dobbs v. Duncan, 458 A.2d 719, 1983 D.C. App. LEXIS 344 (1983).

Independent judicial determination of need for further involuntary hospitalization remedied legal imperfection of original detention, arising from fact that application leading to emergency commitment was signed by physician not empowered by statute to initiate emergency commitment procedure. D.C. Code §§ 21-521 to 21-528. Williams v. Meredith, 407 A.2d 569, 1979 D.C. App. LEXIS 477 (1979).

Physician-member of the Commission on Mental Health who participated in recommending that an individual should be hospitalized under statutory emergency provision is not a "physician of the person in question" who may file an application for emergency hospitalization. D.C. Code §§ 21-502(c), 21-521. Williams v. Meredith, 407 A.2d 569, 1979 D.C. App. LEXIS 477 (1979).

Treatment and therapies.

District of Columbia statute requiring that a person hospitalized in a public hospital for mental illness shall, during his hospitalization,

be entitled to medical and psychiatric care and treatment covers persons hospitalized under any statutory authorization but every patient hospitalized for observation is not necessarily entitled to an immediate and full-blown therapeutic program. D.C. Code §§ 21-521, 21-522, 21-525. In re Curry, 452 F.2d 1360, 1971 U.S. App. LEXIS 7548 (C.A.D.C. 1971).

Prosecution had fundamental law enforcement and societal interests in administering psychotropic medication to defendant so that he could stand trial for murder, for purposes of determining whether defendant could be medicated over his objections, where it had been impossible for several years to bring defendant to trial and it appeared he would not be brought to trial at all without treatment; defendant's request that his commitment be terminated made prosecution's interest more than symbolic. D.C. Code 1981, §§ 21-521, 24-301(a). Tran Van Khiem v. United States, 612 A.2d 160, 1992 D.C. App. LEXIS 218 (1992).

Validity.

Fact that Congress has legislated two statutes for detaining mentally ill persons, one applicable to the metropolitan District of Columbia area containing federal reservations and one applicable to the District of Columbia, does not present a constitutionally suspect situation, inasmuch as the District of Columbia is neither a state nor territory, but a federal enclave, housing the federal government, and Congress may legislate a detention statute applicable only within the District. D.C. Code §§ 21-501 et seq., 21-901 et seq.; U.S. Const. Amend. 5. Medynski v. Margolis, 389 F. Supp. 743, 1975 U.S. Dist. LEXIS 14458 (1975).

Statutes providing for involuntary commitments must meet challenge that they are unconstitutionally vague whether the proceedings are labeled civil or penal. D.C. Code § 21-501 et seq. In re Alexander, 336 F. Supp. 1305, 1972 U.S. Dist. LEXIS 15503 (1972).

Statutory standard for involuntary commitment, requiring, inter alia, that one be likely "to injure himself or other persons," was sufficiently definite to survive constitutional challenge of vagueness. D.C. Code §§ 21-501 et seq., 21-521, 21-527, 21-544, 21-545. In re Alexander, 336 F. Supp. 1305, 1972 U.S. Dist. LEXIS 15503 (1972).

Statute authorizing District agent to detain person believed to be mentally ill and in danger of harming herself or others authorizes detention if agent's belief in person's need for immediate hospitalization is objectively reasonable. D.C. Code 1981, § 21-521. Magwood v. Giddings, 672 A.2d 1083, 1996 D.C. App. LEXIS 43 (1996).

Validity of detention.

Initial emergency detention of plaintiff, based on physician's application for emergency hospitalization on ground of mental illness which was invalid as not being based on examination of plaintiff within 72 hours of its preparation, was null and void, and hospital at which plaintiff had been detained was properly ordered to correct its records to so indicate. D.C. Code 1981, § 21-521. In re Morris, 482 A.2d 369, 1984 D.C. App. LEXIS 480 (1984).

§ 21-522. Examination and admission to hospital; notice.

(a) Subject to the provisions of section 21-523, the administrator of a private hospital may, and the administrator of a public hospital or the chief clinical officer of the Department or his designee shall, admit and detain for purposes of emergency observation and diagnosis a person with respect to whom application is made under section 21-521, if the application is accompanied by a certificate of a psychiatrist, qualified physician, or qualified psychologist on duty at the hospital or the Department stating that he or she:

(1) Has examined the person;

(2) Is of the opinion that the person has symptoms of a mental illness and, because of the mental illness, is likely to injure himself or others unless the person is immediately detained; and

(3) Is of the opinion that hospitalization is the least restrictive form of treatment available to prevent the person from injuring himself or others.

(b) Subject to the provisions of section 21-523, the chief clinical officer of the Department shall admit and detain, for purposes of emergency observation and diagnosis at a facility certified by the Department for emergency detention, a person with respect to whom application is made under section 21-521, if the application is accompanied by a certificate of a psychiatrist, qualified

physician, or qualified psychologist on duty at the Department stating that he or she:

(1) Has examined the person;

(2) Is of the opinion that the person has symptoms of a mental illness and, because of the mental illness, is likely to injure himself or others unless the person is immediately detained;

(3) Is of the opinion that hospitalization is not the least restrictive form of treatment available to ensure that the person will not injure himself or others; and

(4) Is of the opinion that detention in a certified facility for observation and diagnosis is the least restrictive treatment alternative to prevent the person from injuring himself or others.

(c) If the psychiatrist, qualified physician, or qualified psychologist determines, after examining the person who has been presented for emergency observation and diagnosis, that the person is not mentally ill, not likely to injure himself or others unless immediately detained, or that hospitalization or detention in a facility certified for emergency observation and diagnosis is not the least restrictive form of treatment, the psychiatrist, qualified physician, or qualified psychologist shall not admit the person to the hospital or facility as an inpatient and shall facilitate the person's outpatient treatment through the Department or a provider, as appropriate.

(d) Immediately upon the admission of a mentally ill person to a hospital pursuant to this subchapter, the administrator of the hospital shall notify the chief clinical officer of the Department of the admission by telephone, telefax, or electronically. Not later than 24 hours after the admission pursuant to this subchapter, the administrator of the hospital or the chief clinical officer of the Department shall serve notice of the admission to the Commission, the parent or legal guardian of a person under 18 years of age who was admitted pursuant to this subchapter, and, if authorized by the person who was admitted to the hospital or the Department consistent with the provisions of the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law 2-136; D.C. Official Code § 7-1201.01 et seq.), to the spouse or domestic partner, parent of an admitted person who is 18 years of age or older, or legal guardian of the person.

(Sept. 14, 1965, 79 Stat. 753, Pub. L. 89-183, § 1; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(9), 30 DCR 5778; Apr. 4, 2003, D.C. Law 14-283, § 2(i), 50 DCR 917; Sept. 12, 2008, D.C. Law 17-231, § 22(c), 55 DCR 6758.)

Prior Codifications. — 1981 Ed., § 21-522. 1973 Ed., § 21-522.

Effect of amendments. — D.C. Law 14-283 rewrote the section which had read as follows: "§ 21-522. Examination and admission to hospital; notice." "Subject to the provisions of section 21-523, the administrator of a private hospital, may, and the administrator of a public hospital shall, admit and detain for purposes of emergency observation and diagnosis a person with respect to whom application is made under section 21-521, if the application is accompanied by a certificate of a psychiatrist or qualified psychologist on duty at the hospital stating that he has examined the person and is of the opinion that he has symptoms of a mental illness and, as a result thereof, is likely to injure himself or others unless he is immediately hospitalized. Not later than 24 hours after the admission pursuant to this subchapter of a person to a hospital, the administrator of the hospital shall serve notice of the admis-

sion, by registered mail, to the spouse, parent, or legal guardian of the person and to the Commission on Mental Health."

D.C. Law 17-231, in subsec. (d), substituted "spouse or domestic partner" for "spouse".

Temporary Amendment of Section. — Section 2(h) of D.C. Law 14-131 amended this section to read as follows:

"(a) Subject to the provisions of section 21-523, the administrator of a private hospital may, and the administrator of a public hospital or the chief clinical officer of the Department or his designee shall, admit and detain for purposes of emergency observation and diagnosis a person with respect to whom application is made under section 21-521, if the application is accompanied by a certificate of a psychiatrist, qualified physician, or qualified psychologist on duty at the hospital or the Department stating that he:

"(1) Has examined the person;

"(2) Is of the opinion that the person has symptoms of a mental illness and, because of the mental illness, is likely to injure himself or others unless the person is immediately hospitalized; and

"(3) Is of the opinion that hospitalization is the least restrictive form of treatment available to prevent the person from injuring himself or others.

"(b) Subject to the provisions of section 21-523, the chief clinical officer of the Department shall admit and detain, for purposes of emergency observation and diagnosis at a facility certified by the Department for emergency detention, a person with respect to whom application is made under section 21-521, if the application is accompanied by a certificate of a psychiatrist, qualified physician, or qualified psychologist on duty at the Department stating that he:

"(1) Has examined the person;

"(2) Is of the opinion that the person has symptoms of a mental illness and, because of the mental illness, is likely to injure himself or others unless the person is immediately detained;

"(3) Is of the opinion that hospitalization is not the least restrictive form of treatment available to ensure that the person will not injure himself or others; and

"(4) Is of the opinion that detention in a certified facility for observation and diagnosis is the least restrictive treatment alternative to prevent the person from injuring himself or others.

"(c) If the psychiatrist, qualified physician, or qualified psychologist determines, after examining the person who has been presented for emergency observation and diagnosis, that the person is not mentally ill, not likely to injure himself or others unless immediately detained, or that hospitalization or detention in a facility certified for emergency observation and diagnosis is not the least restrictive form of treatment, the psychiatrist, qualified physician, or qualified psychologist shall not admit the person to the hospital or facility as an inpatient and shall facilitate the person's outpatient treatment through the Department or a provider, as appropriate.

"(d) Immediately upon the admission of a mentally ill person to a hospital pursuant to this subchapter, the administrator of the hospital shall notify the chief clinical officer of the Department of the admission by telephone, telefax, or electronically. Not later than 24 hours after the admission pursuant to this subchapter, the administrator of the hospital or the chief clinical officer of the Department shall serve notice of the admission to the spouse, parent, or legal guardian of the person and to the Commission on Mental Health, if authorized by the person who was admitted to the hospital or the Department consistent with the provisions of the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law 2-136; D.C. Official Code § 7-1201.01 et seq.)."

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(h) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(h) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(i) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(i) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 21-501.

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 21-501.

CASE NOTES

ANALYSIS

Constitutional rights.
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Constitutional rights.

One confined in mental hospital involuntarily for limited period for purposes of "observation and diagnosis" has right to be given the attention incident to such observation and diagnosis. D.C. Code § 21-522. In re Curry, 452 F.2d 1360, 1971 U.S. App. LEXIS 7548 (C.A.D.C. 1971).

Involuntary civil commitment proceedings involve a potential deprivation of liberty which requires careful due process protection. U.S. Const. Amend. 14. In re Mendoza, 433 A.2d 1069, 1981 D.C. App. LEXIS 323 (1981).

Conversion of voluntary to involuntary admission.

Where petitioner voluntarily presented himself at university hospital and requested treatment, doctor at this hospital advised petitioner that he could not be admitted there and suggested that he file application for treatment at a public mental hospital, which petitioner was unwilling to do, and doctor then executed an application for emergency hospitalization and sent petitioner in an ambulance to mental hospital which admitted petitioner as involuntary emergency patient, and there was nothing to indicate that petitioner resisted treatment at mental hospital, petitioner's detention as an emergency, involuntary patient was null and void. D.C. Code §§ 21-522, 21-523, 21-528, 21-541. In re Curry, 470 F.2d 368, 1972 U.S. App. LEXIS 7847 (C.A.D.C. 1972).

Examination by qualified persons.

Practicing psychiatrists who had treated patient were qualified to give expert opinion in civil commitment case as to whether patient was likely to injure himself and others in future due to his failure to take prescribed psychotropic medication. Fed.Rules Evid.Rule 702, 18 U.S.C.; D.C. Code 1981, §§ 21-522, 21-544, 21-902(b)(2), 24-301(e)(1, 2). In re Melton, 597 A.2d 892, 1991 D.C. App. LEXIS 273 (1991).

In process of petitioning for involuntary commitment of individual, hospital superintendent was not, merely by virtue of being physician himself, required to personally conduct examination of individual within 72 hours prior to making petition; petition, accompanied by certificate of physician who actually did conduct examination, was sufficient under statutes. D.C. Code 1981, §§ 21-501, 21-521 to 21-523, 21-524(b), 21-541(a), (a)(1), (a)(2)(A), 21-582(a, b). Dobbs v. Duncan, 458 A.2d 719, 1983 D.C. App. LEXIS 344 (1983).

Physician-member of the Commission on Mental Health who participated in recommending that an individual should be hospitalized under statutory emergency provision is not a "physician of the person in question" who may file an application for emergency hospitalization. D.C. Code §§ 21-502(c), 21-521. Williams v. Meredith, 407 A.2d 569, 1979 D.C. App. LEXIS 477 (1979).

In general.

A physician who has reason to believe that his patient is mentally ill and, because of the illness, is likely to injure himself or others if he is not immediately detained is, under District of Columbia law, statutorily empowered, without a warrant, to take the patient into custody, transport him to a public or private hospital, and make application for his admission thereto for purposes of emergency observation and diagnosis. D.C. Code §§ 21-521, 21-522. Johnson v. United States, 547 F.2d 688, 1976 U.S. App. LEXIS 6019 (C.A.D.C. 1976).

Liability for admission irregularities.

Under District of Columbia law, the examination requirement preconditioning admission to and detention of suspected mental patient in hospital is imposed upon psychiatrist on duty at hospital and not upon the initiating physician who is clothed with a privilege immunizing his role as the agency by which such examinations become possible; thus, the United States, could not be held liable under Federal Tort Claims Act on claim of former Veterans Administration hospital patient that he had been committed to hospital upon application executed by Veterans Administration hospital physician without complying with reasonable medical standards of care required under circumstances then existing. D.C. Code §§ 21-521, 21-522; 18 U.S.C. § 294(d). Johnson v. United States, 547 F.2d 688, 1976 U.S. App. LEXIS 6019 (C.A.D.C. 1976).

Physician for Veterans Administration hospital could not be held individually liable for commitment of patient, believed to be mentally ill, to hospital for observation even if he were in fact somehow negligent. D.C. Code § 21-522; 38 U.S.C. § 4116(a). Johnson v. United States, 547 F.2d 688, 1976 U.S. App. LEXIS 6019 (C.A.D.C. 1976).

Orders and records.

Individual who was improperly detained in

admission process on application for emergency hospitalization of person believed to be mentally ill can seek to have that admission expunged from record. D.C. Code 1981, § 21-522. In re Herman, 619 A.2d 958, 1993 D.C. App. LEXIS 21 (1993).

Collateral consequences that accompanied involuntary civil commitment of patient precluded finding that patient's challenge to commitment was rendered moot by subsequent change in patient's status to that of a voluntary patient. D.C. Code 1981, § 21-522. In re Blair, 510 A.2d 1048, 1986 D.C. App. LEXIS 361 (1986).

Presumptions and burden of proof.

There is no irrebuttable presumption that involuntary patient in mental hospital is receiving appropriate program of observation merely because he is hospitalized under statute that permits "emergency observation and diagnosis." D.C. Code § 21-522. In re Curry, 452 F.2d 1360, 1971 U.S. App. LEXIS 7548 (C.A.D.C. 1971).

When an individual is detained on an emergency basis prior to a judicial determination of a need for his involuntary hospitalization, the government has the burden of showing probable cause to justify detaining him. D.C. Code §§ 21-521 to 21-528. Williams v. Meredith, 407 A.2d 569, 1979 D.C. App. LEXIS 477 (1979).

Rehospitalization.

Trial court may authorize mentally ill outpatient's summary rehospitalization in certain situations without prior adversary hearing, provided the patient is detained only temporarily and the hospital complies with certain affidavit and notice requirements which are in harmony with the dictates of due process. D.C. Code 1981, §§ 21-501 et seq., 21-521, 21-522; U.S.C. Const.Amends. 5, 14. In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Question whether to return an involuntarily committed out-patient for temporary institutional evaluation and stabilization concerns the appropriate situs for involuntary treatment and is peculiarly medical in nature. D.C. Code 1981, § 21-501 et seq. In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Government has significant interest in the expeditious reexamination of committed individuals who fail to comply with the terms of outpatient mental treatment or suffer deterioration in the community. D.C. Code 1981, § 21-501 et seq. In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Time requirements.

Allegations of involuntary patient in District of Columbia public mental hospital in hospital's proceeding to extend period of hospitalization warranted hearing on whether hospital had taken any step toward observation and diagnosis or whether hospital had provided only custodial care; if patient establishes truth of his allegations, he must either be released or be provided care that is consonant with goals of observation and diagnosis, and ultimately of treatment if deemed necessary under diagnosis. D.C. Code §§ 21-522, 21-523, 21-525. In re Curry, 452 F.2d 1360, 1971 U.S. App. LEXIS 7548 (C.A.D.C. 1971).

Petition for continued treatment of mentally ill patient filed at 1:51 p.m. on September 5 was not filed within the statutory period of seven days from entry of initial order for emergency hospitalization which was issued at 11:51 a.m. on August 29. D.C. Code 1981, § 21-522. In re Strickland, 597 A.2d 869, 1991 D.C. App. LEXIS 284 (1991).

Government could not rely on late-filed petition to authorize continued involuntary confinement of assertedly mentally ill patient during pendency of judicial proceedings regardless of fact that subsequent judicial review occurred. D.C. Code 1981, §§ 21-501 to 21-592. In re Reed, 571 A.2d 801, 1990 D.C. App. LEXIS 59 (1990).

Treatment and therapies.

District of Columbia statute requiring that a person hospitalized in a public hospital for mental illness shall, during his hospitalization, be entitled to medical and psychiatric care and treatment covers persons hospitalized under any statutory authorization but every patient hospitalized for observation is not necessarily entitled to an immediate and full-blown therapeutic program. D.C. Code §§ 21-521, 21-522, 21-525. In re Curry, 452 F.2d 1360, 1971 U.S. App. LEXIS 7548 (C.A.D.C. 1971).

The overall therapeutic process—which begins with observation and diagnosis to determine whether treatment is required—must be initiated as soon as the period of involuntary hospitalization in public mental hospital begins. D.C. Code § 21-522. In re Curry, 452 F.2d 1360, 1971 U.S. App. LEXIS 7548 (C.A.D.C. 1971).

Every competent adult has right to determine what shall be done with his own body, but once an individual becomes incompetent, state must act as parens patriae; as such, state has duty and right to care for "best interest" of incompetent, even if that occasionally means overriding a decision made by individual while incompetent. In re Boyd, 403 A.2d 744, 1979 D.C. App. LEXIS 404 (1979).

In situation in which individual's life itself is not at stake, such individual, prior to incompetence, has objected, absolutely, to medical care on religious grounds, evidence demonstrates strong adherence to tenets of that faith, and there is no countervailing evidence of vacillation, the court in applying the "substituted

judgment" test in determining whether to require such treatment, should conclude that the individual would reject medical treatment; in other, less clear situations, court should make putative decision by looking at nature, intensity, and longevity of patient's objection to medical care, the intrusiveness and side effects of proposed treatment and likelihood of cure or improvement with or without such treatment. U.S. Const. Amend. 1. In re Boyd, 403 A.2d 744, 1979 D.C. App. LEXIS 404 (1979).

Even if a state interest is sufficiently compelling to justify overriding incompetent patient's choice that she not receive certain medical treatment, trial court must order only the least intrusive form of treatment for the state's interest must necessarily decrease as degree of bodily invasion increases. U.S. Const. Amend. 1. In re Boyd, 403 A.2d 744, 1979 D.C. App. LEXIS 404 (1979).

When a legally incompetent patient asserts a First Amendment right not to receive psychotropic drugs, and such drugs are not needed to save patient's life, trial court in determining whether to authorize such medication must use "substituted" judgment approach and determine as best it can what choice the individual, if competent, would make with respect to such treatment. U.S. Const. Amend. 1. In re Boyd, 403 A.2d 744, 1979 D.C. App. LEXIS 404 (1979).

§ 21-523. Court order requirement for hospital detention beyond 48 hours; maximum period for observation.

A person admitted to a hospital or the Department under section 21-522 may not be detained in the hospital or by the Department for a period in excess of 48 hours from the time of the person's admission, unless the administrator of the hospital, the chief clinical officer of the Department, or the administrator's or chief clinical officer's designee has, within that period, filed a written petition with the court for an order authorizing the continued detention of the person for emergency observation and diagnosis for a period not to exceed 7 days from the time the order is entered.

(Sept. 14, 1965, 79 Stat. 753, Pub. L. 89-183, § 1; Apr. 4, 2003, D.C. Law 14-283, § 2(j), 50 DCR 917.)

Prior Codifications. — 1981 Ed., § 21-523. 1973 Ed., § 21-523.

Effect of amendments. — D.C. Law 14-283 rewrote the section which had read as follows: "§ 21-523. Court order requirement for hospital detention beyond 48 hours; maximum period for observation." "A person admitted to a hospital under section 21-522 may not be detained in the hospital for a period in excess of 48 hours from the time of his admission, unless the administrator of the hospital has, within that period, filed a written petition with the court for an order authorizing the continued hospitalization of the person for emergency observation and diagnosis for a period not to exceed 7 days from the time the order is entered."

Temporary Amendment of Section. — Section 2(i) of D.C. Law 14-131 amended this section to read as follows: "A person admitted to a hospital or the Department under section 21-522 may not be detained in the hospital or by the Department for a period in excess of 48 hours from the time of the person's admission, unless the administrator of the hospital, the chief clinical officer of the Department, or the administrator's or chief clinical officer's designee has, within that period, filed a written petition with the court for an order authorizing the continued hospitalization of the person for emergency observation and diagnosis for a period not to exceed 7 days from the time the order is entered."

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(i) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(i) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(j) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(j) of Mental Health Civil Commit-

ment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

CASE NOTES

ANALYSIS

Constitutional rights of detainees.
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Constitutional rights of detainees.

Notice of signing of order under statute providing, inter alia, that within 24 hours after court receives a petition for hospitalization of a person for emergency observation and diagnosis the court shall order the hospitalization or order the person's immediate release, which statute authorizes a seven-day commitment, should be given within 24 hours so that a hearing may be had within the first two days of the seven-day period since, when personal freedom is at issue, due process demands that a person's legal status be determined at the earliest possible time. D.C. Code §§ 21-523, 21-524. In re Barnard, 455 F.2d 1370, 1971 U.S. App. LEXIS 6472 (C.A.D.C. 1971).

Because of the massive curtailment of liberty occasioned by civil commitment of any length, certain constitutional rights attach to civil commitment process including the Fifth Amendment right not to be so detained simply because one is "mentally ill." U.S. Const. Amend. 5. In re Barnard, 455 F.2d 1370, 1971 U.S. App. LEXIS 6472 (C.A.D.C. 1971).

A person detained under a civil commitment statute must be given a hearing within a reasonable time to insure that probable cause exists to believe that confinement is constitutionally and statutorily warranted. In re Barnard, 455 F.2d 1370, 1971 U.S. App. LEXIS 6472 (C.A.D.C. 1971).

In commitment proceeding, admission of evidence of patient's conduct prior to previously unsuccessful commitment hearing did not violate patient's due process rights; patient's recent and continuing behavior provided clear reason for District to initiate new civil commitment proceedings, and statute provided effective means for identification and dismissal of petitions grounded on outdated and insubstantial evidence of current mental illness and dangerousness. D.C. Code 1981, §§ 21-523, 21-542, 21-544; U.S. Const.Amend. 14. In re Katz, 638 A.2d 684, 1994 D.C. App. LEXIS 36 (1994).

Construction and application.

Court of Appeals construes Hospitalization of the Mentally Ill Act narrowly where its application results in curtailment of individual's liberty. D.C. Code 1981, §§ 21-501 to 21-592. In re Reed, 571 A.2d 801, 1990 D.C. App. LEXIS 59 (1990).

Construction with other statutes.

Statute providing that a person admitted to hospital for emergency observation and diagnosis under Hospitalization of Mentally Ill Act may not be detained for period over 48 hours unless hospital administrator has filed petition for order authorizing continued hospitalization for period not to exceed seven days from entry of order must be read in connection with another provision of Hospitalization of Mentally Ill Act providing that hospital administrator may, if judicial proceedings for hospitalization have been commenced, detain person in hospital during course of the judicial proceedings. D.C. Code 1961, §§ 21-523, 21-528. In re Perry, 269 F. Supp. 729, 1967 U.S. Dist. LEXIS 8792 (D.D.C1967).

In general.

Case in which petitioner challenged validity of his prior emergency confinement as a person mentally ill and dangerous to himself or others presented sufficient adversariness to avoid mootness in constitutional sense, although hospital had initiated judicial proceeding for long-term hospitalization and had later unconditionally released petitioner. D.C. Code §§ 21-522, 21-523, 21-528. In re Curry, 470 F.2d 368, 1972 U.S. App. LEXIS 7847 (C.A.D.C. 1972).

Challenge to trial court's application of District of Columbia Hospitalization of the Mentally Ill Act was not rendered moot by discharge of patient, since issue raised, concerning required 24-hour hearing, was "capable of repetition yet evading review." D.C. Code 1981, §§ 21-501 to 21-592. In re De Loatch, 532 A.2d 1343, 1987 D.C. App. LEXIS 479 (1987).

Orders and records.

Where petitioner voluntarily presented himself at university hospital and requested treatment, doctor at this hospital advised petitioner that he could not be admitted there and suggested that he file application for treatment at

a public mental hospital, which petitioner was unwilling to do, and doctor then executed an application for emergency hospitalization and sent petitioner in an ambulance to mental hospital which admitted petitioner as involuntary emergency patient, and there was nothing to indicate that petitioner resisted treatment at mental hospital, petitioner's detention as an emergency, involuntary patient was null and void. D.C. Code §§ 21-522, 21-523, 21-528, 21-541. In re Curry, 470 F.2d 368, 1972 U.S. App. LEXIS 7847 (C.A.D.C. 1972).

Revocation of patient's outpatient commitment order was rendered invalid by illegal ten-day detention as involuntary inpatient that preceded it. D.C. Code 1981, §§ 21-501 to 21-592. In re Feenster, 561 A.2d 997, 1989 D.C. App. LEXIS 136 (1989).

Presumptions and burden of proof.

Proof of mental illness and dangerousness in involuntary civil commitment proceedings must be beyond a reasonable doubt rather than by preponderance of evidence. D.C. Code §§ 21-521, 21-523, 21-524, 21-528, 21-545, 21-545(b); U.S. Const. Amends. 5, 14. In re Ballay, 482 F.2d 648, 1973 U.S. App. LEXIS 9680 (C.A.D.C. 1973).

"Probable cause" to believe that a patient should be hospitalized must be shown by the government to justify seven-day commitment order at hearing held under statute providing that court shall grant a hearing to a person whose continued hospitalization is ordered under statute, if he requests a hearing, which hearing shall be held within 24 hours after receipt of the request. D.C. Code §§ 21-523 to 21-525. In re Barnard, 455 F.2d 1370, 1971 U.S. App. LEXIS 6472 (C.A.D.C. 1971).

When an individual is detained on an emergency basis prior to a judicial determination of a need for his involuntary hospitalization, the government has the burden of showing probable cause to justify detaining him. D.C. Code §§ 21-521 to 21-528. Williams v. Meredith, 407 A.2d 569, 1979 D.C. App. LEXIS 477 (1979).

Procedural irregularities.

Physician's petition for judicial hospitalization of patient commenced the judicial proceedings so that detention of patient during course of proceedings was authorized even though petition was not filed until almost four weeks after patient had been admitted to hospital. D.C. Code 1961, §§ 21-521 to 21-523, 21-528, 21-541. In re Perry, 269 F. Supp. 729, 1967 U.S. Dist. LEXIS 8792 (D.D.C1967).

Fact that one physician's application for emergency hospitalization of plaintiff on ground of mental illness was invalid as not being based on examination of plaintiff within 72 hours of its preparation did not require trial court to reconsider its determination of probable cause to detain plaintiff, where such determination had also been based on separate and valid information from different physician, and plaintiff had waived his right to probable cause hearing in which defect could have been corrected. D.C. Code 1981, §§ 21-523, 21-525. In re Morris, 482 A.2d 369, 1984 D.C. App. LEXIS 480 (1984).

In process of petitioning for involuntary commitment of individual, hospital superintendent was not, merely by virtue of being physician himself, required to personally conduct examination of individual within 72 hours prior to making petition; petition, accompanied by certificate of physician who actually did conduct examination, was sufficient under statutes. D.C. Code 1981, §§ 21-501, 21-521 to 21-523, 21-524(b), 21-541(a), (a)(1), (a)(2)(A), 21-582(a, b). Dobbs v. Duncan, 458 A.2d 719, 1983 D.C. App. LEXIS 344 (1983).

Independent judicial determination of need for further involuntary hospitalization remedied legal imperfection of original detention, arising from fact that application leading to emergency commitment was signed by physician not empowered by statute to initiate emergency commitment procedure. D.C. Code §§ 21-521 to 21-528. Williams v. Meredith, 407 A.2d 569, 1979 D.C. App. LEXIS 477 (1979).

Therapies and treatment.

Allegations of involuntary patient in District of Columbia public mental hospital in hospital's proceeding to extend period of hospitalization warranted hearing on whether hospital had taken any step toward observation and diagnosis or whether hospital had provided only custodial care; if patient establishes truth of his allegations, he must either be released or be provided care that is consonant with goals of observation and diagnosis, and ultimately of treatment if deemed necessary under diagnosis. D.C. Code §§ 21-522, 21-523, 21-525. In re Curry, 452 F.2d 1360, 1971 U.S. App. LEXIS 7548 (C.A.D.C. 1971).

Time requirements.

When a person is subject to emergency hospitalization on basis that he is believed to be mentally ill, during course of judicial proceedings, hospital is required to file judicial hospitalization petition within seven-day period established in statute setting forth maximum period for observation. D.C. Code 1981, §§ 21-523, 21-528. In re Herman, 619 A.2d 958, 1993 D.C. App. LEXIS 21 (1993).

Petition for continued treatment of mentally ill patient filed at 1:51 p.m. on September 5 was not filed within the statutory period of seven days from entry of initial order for emergency hospitalization which was issued at 11:51 a.m. on August 29. D.C. Code 1981, § 21-522. In re

Strickland, 597 A.2d 869, 1991 D.C. App. LEXIS 284 (1991).

Government could not rely on late-filed petition to authorize continued involuntary confinement of assertedly mentally ill patient during pendency of judicial proceedings regardless of fact that subsequent judicial review occurred. D.C. Code 1981, §§ 21-501 to 21-592. In re Reed, 571 A.2d 801, 1990 D.C. App. LEXIS 59 (1990).

After court finds in Jackson hearing that defendant is unlikely to become competent in foreseeable future, government must institute civil commitment proceeding, if one is desired, within 30 days, and, while the rule is not inviolable, extension should normally be granted only for extraordinary cause shown. D.C. Code §§ 21-521, 21-523 to 21-525, 21-541, 21-541(a), 21-542 to 21-545, 22-501, 22-507, 22-2307, 24-301(a); U.S. Const. Amend. 14. Thomas v. United States, 418 A.2d 122, 1980 D.C. App. LEXIS 333 (1980).

Violation of time requirements.

Government could not rely on late-filed petition to authorize continued involuntary confinement of assertedly mentally ill patient during pendency of judicial proceedings regardless of fact that subsequent judicial review occurred. D.C. Code 1981, §§ 21-501 to 21-592. In re Reed, 571 A.2d 801, 1990 D.C. App. LEXIS 59 (1990).

Treatment of patient subject to outpatient commitment as involuntarily hospitalized inpatient violated the Hospitalization of the Mentally Ill Act where patient was held for ten days without judicial hearing to determine whether probable cause existed for his hospitalization. D.C. Code 1981, §§ 21-501 to 21-592. In re Feenster, 561 A.2d 997, 1989 D.C. App. LEXIS 136 (1989).

Neither court's ex parte probable cause determination ten days after legally committed outpatient was detained as involuntary inpatient nor adversarial revocation hearing on patient's outpatient status held 25 days after his hospitalization cured patient's illegal detention for ten days without any judicial review. D.C. Code 1981, §§ 21-501 to 21-592. In re Feenster, 561 A.2d 997, 1989 D.C. App. LEXIS 136 (1989).

Trial court's ultimate determination that probable cause existed to continue emergency hospitalization of patient under District of Columbia Hospitalization of the Mentally Ill Act did not cure court's violation of the Act by failing to hold hearing within 24 hours of patient's request. D.C. Code 1981, §§ 21-501 to 21-592, 21-525. In re De Loatch, 532 A.2d 1343, 1987 D.C. App. LEXIS 479 (1987).

Man, who had been charged with crime, committed to mental hospital due to incompetency to stand trial and found unlikely to regain his competency in the reasonable foreseeable future, was not denied equal protection by Government's delaying commencing civil commitment proceedings for 42 days after the finding was made, where subsequent periods of confinement were relatively brief, civil commitment was accomplished within three months of finding and court was acquainted with medical report conclusion that man would be dangerous to himself or others if released. D.C. Code §§ 21-521, 21-523 to 21-525, 21-541, 21-541(a), 21-542 to 21-545, 22-501, 22-507, 22-2307, 24-301(a); U.S. Const. Amend. 14. Thomas v. United States, 418 A.2d 122, 1980 D.C. App. LEXIS 333 (1980).

§ 21-524. Determination and order of court.

(a) Within a period of 24 hours after the court receives a petition for hospitalization of a person for emergency observation and diagnosis, filed by the administrator of a hospital or chief clinical officer of the Department pursuant to section 21-523, the court shall:

(1) order the hospitalization; or

(2) order the person's immediate release.

(b) The court, in making its determination under this section, shall consider the written reports of the agent, officer, physician or qualified psychologist who made the application under section 21-522, the certificate of the examining psychiatrist or examining qualified psychologist which accompanied it, and any other relevant information.

(Sept. 14, 1965, 79 Stat. 754, Pub. L. 89-183, § 1; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(10), 30 DCR 5778; Apr. 4, 2003, D.C. Law 14-283, § 2(k), 50 DCR 917.)

Prior Codifications. — 1981 Ed., § 21-524. 1973 Ed., § 21-524.

Effect of amendments. — D.C. Law 14-283, in subsec. (a), substituted "administrator of a hospital or chief clinical officer of the Department" for "administrator of a hospital".

Temporary Amendment of Section. — Section 2(j) of D.C. Law 14-131, in subsec. (a), substituted "administrator of a hospital or chief clinical officer of the Department" for "administrator of a hospital".

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(j) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(k) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(j) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(k) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 21-501.

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

CASE NOTES

ANALYSIS

Constitutional rights of detainee.
Examination of detainee.
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Judicial inquiry.
Presumptions and burden of proof.
Time requirements.

Constitutional rights of detainee.

Because of the massive curtailment of liberty occasioned by civil commitment of any length, certain constitutional rights attach to civil commitment process including the Fifth Amendment right not to be so detained simply because one is "mentally ill." U.S. Const. Amend. 5. Bension v. Meredith, 455 F. Supp. 662, 1978 U.S. Dist. LEXIS 19102 (1978).

Man, who had been charged with crime, committed to mental hospital due to incompetency to stand trial and found unlikely to regain his competency in the reasonable foreseeable future, was not denied equal protection by Government's delaying commencing civil commitment proceedings for 42 days after the finding was made, where subsequent periods of confinement were relatively brief, civil commitment was accomplished within three months of finding and court was acquainted with medical report conclusion that man would be dangerous to himself or others if released. D.C. Code §§ 21-521, 21-523 to 21-525, 21-541, 21-541(a), 21-542 to 21-545, 22-501, 22-507, 22-2307, 24-301(a); U.S. Const. Amend. 14. Thomas v. United States, 418 A.2d 122, 1980 D.C. App. LEXIS 333 (1980).

Examination of detainee.

Defects in application form for emergency observation and diagnosis of person believed to be mentally ill did not mandate immediate release, even if physician's application was not based on "personal observation and examination"; application reflected genuine personal involvement in process; moreover, trial court heard three separate witnesses and ample grounds existed for conclusion apart from application form itself. D.C. Code 1981, §§ 21-524, 21-525, 21-582(a, b). In re Herman, 619 A.2d 958, 1993 D.C. App. LEXIS 21 (1993).

In process of petitioning for involuntary commitment of individual, hospital superintendent was not, merely by virtue of being physician himself, required to personally conduct examination of individual within 72 hours prior to making petition; petition, accompanied by certificate of physician who actually did conduct examination, was sufficient under statutes. D.C. Code 1981, §§ 21-501, 21-521 to 21-523, 21-524(b), 21-541(a), (a)(1), (a)(2)(A), 21-582(a, b). Dobbs v. Duncan, 458 A.2d 719, 1983 D.C. App. LEXIS 344 (1983).

Habeas corpus.

A civil committee may challenge through habeas corpus any earlier commitment that may in some way operate to enhance a subsequent commitment being served at time of challenge. Bension v. Meredith, 455 F. Supp. 662, 1978 U.S. Dist. LEXIS 19102 (1978).

Habeas corpus is proper means for testing constitutionality of detention under civil commitment laws. Bension v. Meredith, 455 F. Supp. 662, 1978 U.S. Dist. LEXIS 19102 (1978).

Judicial inquiry.

When trial court becomes involved in process of committing person deemed to be dangerously mentally ill, its focus should be on present mental condition of person involved and

whether or not probable cause exists to believe that person is likely to injure himself or others if not immediately detained, and defect in application itself should be taken into account insofar as it could bear upon reliability and integrity of application and information therein, but should not be treated as per se cause for immediate termination of proceedings and release of person involved no matter how dangerous to self or others. D.C. Code 1981, §§ 21-521, 21-524, 21-525. In re Herman, 619 A.2d 958, 1993 D.C. App. LEXIS 21 (1993).

Defects in application for emergency hospitalization of person believed to be mentally ill are not irrelevant, but, rather, trial court quite properly should take such defects into account insofar as they bear upon reliability and integrity of application and information therein. D.C. Code 1981, §§ 21-524, 21-525, 21-582(a, b). In re Herman, 619 A.2d 958, 1993 D.C. App. LEXIS 21 (1993).

Independent judicial determination of need for further involuntary hospitalization remedied legal imperfection of original detention, arising from fact that application leading to emergency commitment was signed by physician not empowered by statute to initiate emergency commitment procedure. D.C. Code §§ 21-521 to 21-528. Williams v. Meredith, 407 A.2d 569, 1979 D.C. App. LEXIS 477 (1979).

Presumptions and burden of proof.

Proof of mental illness and dangerousness in involuntary civil commitment proceedings must be beyond a reasonable doubt rather than by preponderance of evidence. D.C. Code §§ 21-521, 21-523, 21-524, 21-528, 21-545, 21-545(b); U.S. Const. Amends. 5, 14. In re Ballay, 482 F.2d 648, 1973 U.S. App. LEXIS 9680 (C.A.D.C. 1973).

When an individual is detained on an emergency basis prior to a judicial determination of a need for his involuntary hospitalization, the government has the burden of showing probable cause to justify detaining him. D.C. Code §§ 21-521 to 21-528. Williams v. Meredith, 407 A.2d 569, 1979 D.C. App. LEXIS 477 (1979).

Time requirements.

Notice of signing of order under statute providing, inter alia, that within 24 hours after court receives a petition for hospitalization of a person for emergency observation and diagnosis the court shall order the hospitalization or order the person's immediate release, which statute authorizes a seven-day commitment, should be given within 24 hours so that a hearing may be had within the first two days of the seven-day period since, when personal freedom is at issue, due process demands that a person's legal status be determined at the earliest possible time. D.C. Code §§ 21-523, 21-524. In re Barnard, 455 F.2d 1370, 1971 U.S. App. LEXIS 6472 (C.A.D.C. 1971).

Court must rule on petition for emergency hospitalization of person believed to be dangerously mentally ill within 24 hours of its receipt, and, if court orders continuing hospitalization and person requests hearing on matter, court must hold hearing within 24 hours of receipt of request. D.C. Code 1981, § 21-524. In re Herman, 619 A.2d 958, 1993 D.C. App. LEXIS 21 (1993).

Government could not rely on late-filed petition to authorize continued involuntary confinement of assertedly mentally ill patient during pendency of judicial proceedings regardless of fact that subsequent judicial review occurred. D.C. Code 1981, §§ 21-501 to 21-592. In re Reed, 571 A.2d 801, 1990 D.C. App. LEXIS 59 (1990).

§ 21-525. Hearing by court.

The court shall grant a hearing to a person whose continued hospitalization is ordered under section 21-524, if he requests the hearing. The hearing shall be held within 24 hours after receipt of the request.

(Sept. 14, 1965, 79 Stat. 754, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-525. 1973 Ed., § 21-525.

Law Review and Journal Commentaries

Camouflaged Legitimacy: Civil Commitment, Property Rights, and Legal Isolation. Valerie L. Collins, 52 Howard Law Journal 407 (2009).

CASE NOTES

ANALYSIS

Appeal.
Conduct of hearing.
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Judicial inquiry.
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Appeal.

Hospital had right to appeal denial of petition for involuntary commitment that was denied solely on basis of trial court's interpretation of time limits for probable cause hearing under Ervin Act; merits of commitment petition were not considered and hospital could be repeatedly thwarted by adverse conflicting lower court interpretations of procedural requirements absent appeal. D.C. Code 1981, §§ 21-521 to 21-526. In re Barlow, 634 A.2d 1246, 1993 D.C. App. LEXIS 315 (1993).

Conduct of hearing.

In the future, in relation to hearing on emergency hospitalization of person who is alleged to be mentally ill, conferences should be held in open court on the record, reporter should be present for conferences in chambers, or judge should state for the record in the presence of counsel what was discussed and agreed upon at a conference at which no reporter was present, in order that there might be effective review. D.C. Code §§ 21-521 to 21-524. In re Barnard, 455 F.2d 1370, 1971 U.S. App. LEXIS 6472 (C.A.D.C. 1971).

Constitutional rights.

Civil committee has right to jury trial on questions of mental illness and dangerousness, whereas criminal acquittee who has entered plea of not guilty by reason of insanity is committed without prior hearing and is entitled only to bench trial at which he, not the Government, bears the burden of proof. D.C. Code 1981, §§ 21-524 to 21-547, 24-301(d)(2), (k). Walls v. United States, 601 A.2d 54, 1991 D.C. App. LEXIS 335 (1991).

Construction and application.

Court of Appeals construes Hospitalization of the Mentally Ill Act narrowly where its application results in curtailment of individual's liberty. D.C. Code 1981, §§ 21-501 to 21-592. In re Reed, 571 A.2d 801, 1990 D.C. App. LEXIS 59 (1990).

Judicial inquiry.

When neither the validity of documents signed by physician and psychiatrist relating to emergency hospitalization of person who was alleged to be mentally ill nor the accuracy of the opinions and information in the documents was contested, there was an adequate basis for continuing the emergency hospitalization. D.C. Code §§ 21-521 to 21-525. In re Barnard, 455 F.2d 1370, 1971 U.S. App. LEXIS 6472 (C.A.D.C. 1971).

When trial court becomes involved in process of committing person deemed to be dangerously mentally ill, its focus should be on present mental condition of person involved and whether or not probable cause exists to believe that person is likely to injure himself or others if not immediately detained, and defect in application itself should be taken into account insofar as it could bear upon reliability and integrity of application and information therein, but should not be treated as per se cause for immediate termination of proceedings and release of person involved no matter how dangerous to self or others. D.C. Code 1981, §§ 21-521, 21-524, 21-525. In re Herman, 619 A.2d 958, 1993 D.C. App. LEXIS 21 (1993).

Mootness.

Appeal was not moot for patient seeking reversal of court order involuntarily admitting her to in-hospital emergency psychiatric care with continued detention for up to seven days and amendment of hospital records to indicate that detention was unlawful and patient was not mentally ill, notwithstanding her discharge from hospital several days after hearing. In re Rosell, 547 A.2d 180, 1988 D.C. App. LEXIS 146 (1988).

Presumptions and burden of proof.

Rational basis exists for allowing government, at hearing on detention of patient believed to be mentally ill and likely to injure himself or others if not immediately detained, to make a showing of probable cause on the papers alone, without the personal testimony of physicians; only if counsel for patient makes a proffer of contrary proof or challenges the accuracy of the facts or diagnoses in the papers should the government be compelled to offer live testimony. D.C. Code §§ 21-521 to 21-525. In re Barnard, 455 F.2d 1370, 1971 U.S. App. LEXIS 6472 (C.A.D.C. 1971).

Government has the initial burden of producing evidence showing probable cause justifying further detention of an involuntary mental patient. D.C. Code §§ 21-521 to 21-525. In re Barnard, 455 F.2d 1370, 1971 U.S. App. LEXIS 6472 (C.A.D.C. 1971).

"Probable cause" to believe that a patient should be hospitalized must be shown by the government to justify seven-day commitment order at hearing held under statute providing that court shall grant a hearing to a person whose continued hospitalization is ordered under statute, if he requests a hearing, which hearing shall be held within 24 hours after receipt of the request. D.C. Code §§ 21-523 to 21-525. In re Barnard, 455 F.2d 1370, 1971 U.S. App. LEXIS 6472 (C.A.D.C. 1971).

At a hearing on involuntary detention of person who is alleged to be mentally ill and likely to injure himself or others if not immediately detained, the government may rely upon the papers which were before the judge who

authorized the seven-day commitment under statute; if the judge at the hearing concludes from these papers that there is probable cause to believe the person is mentally ill and, as result thereof, is likely to injure himself or others if not detained, he may find the hospitalization legal unless the person offers evidence which sufficiently rebuts the documentary evidence. D.C. Code §§ 21-524, 21-525. In re Barnard, 455 F.2d 1370, 1971 U.S. App. LEXIS 6472 (C.A.D.C. 1971).

Rational basis exists for allowing government, at hearing on detention of patient believed to be mentally ill and likely to injure himself or others if not immediately detained, to make a showing of probable cause on the papers alone, without the personal testimony of physicians; only if counsel for patient makes a proffer of contrary proof or challenges the accuracy of the facts or diagnoses in the papers should the government be compelled to offer live testimony. D.C. Code §§ 21-521 to 21-525. In re Barnard, 455 F.2d 1370, 1971 U.S. App. LEXIS 6472 (C.A.D.C. 1971).

Commitment papers containing mere conclusory statements will not suffice to provide probable cause at hearing in relation to person who has been involuntarily detained on grounds that he is likely to injure himself or others; conclusions in the papers must be sufficiently detailed and supported by facts to allow the court to perform its function of passing on their credibility in determining whether probable cause exists for continued incarceration. D.C. Code § 21-525. In re Barnard, 455 F.2d 1370, 1971 U.S. App. LEXIS 6472 (C.A.D.C. 1971).

Civil committee has right to jury trial on questions of mental illness and dangerousness, whereas criminal acquittee who has entered plea of not guilty by reason of insanity is committed without prior hearing and is entitled only to bench trial at which he, not the Government, bears the burden of proof. D.C. Code 1981, §§ 21-524 to 21-547, 24-301(d)(2), (k). Walls v. United States, 601 A.2d 54, 1991 D.C. App. LEXIS 335 (1991).

The imperfection of patient's initial admission to hospital for emergency psychiatric care by doctor who was not her physician did not impair validity of patient's continued detention where government met its burden of showing probable cause to believe that patient suffered from mental illness and was likely to injure herself if not retained. D.C. Code 1981, §§ 21-501 to 21-592. In re Rosell, 547 A.2d 180, 1988 D.C. App. LEXIS 146 (1988).

When an individual is detained on an emergency basis prior to a judicial determination of a need for his involuntary hospitalization, the government has the burden of showing probable cause to justify detaining him. D.C. Code §§ 21-521 to 21-528. Williams v. Meredith, 407 A.2d 569, 1979 D.C. App. LEXIS 477 (1979).

Procedural irregularities.

Defects in application form for emergency observation and diagnosis of person believed to be mentally ill did not mandate immediate release, even if physician's application was not based on "personal observation and examination"; application reflected genuine personal involvement in process; moreover, trial court heard three separate witnesses and ample grounds existed for conclusion apart from application form itself. D.C. Code 1981, §§ 21-524, 21-525, 21-582(a, b). In re Herman, 619 A.2d 958, 1993 D.C. App. LEXIS 21 (1993).

Defects in application for emergency hospitalization of person believed to be mentally ill are not irrelevant, but, rather, trial court quite properly should take such defects into account insofar as they bear upon reliability and integrity of application and information therein. D.C. Code 1981, §§ 21-524, 21-525, 21-582(a, b). In re Herman, 619 A.2d 958, 1993 D.C. App. LEXIS 21 (1993).

Government could not rely on late-filed petition to authorize continued involuntary confinement of assertedly mentally ill patient during pendency of judicial proceedings regardless of fact that subsequent judicial review occurred. D.C. Code 1981, §§ 21-501 to 21-592. In re Reed, 571 A.2d 801, 1990 D.C. App. LEXIS 59 (1990).

Fact that one physician's application for emergency hospitalization of plaintiff on ground of mental illness was invalid as not being based on examination of plaintiff within 72 hours of its preparation did not require trial court to reconsider its determination of probable cause to detain plaintiff, where such determination had also been based on separate and valid information from different physician, and plaintiff had waived his right to probable cause hearing in which defect could have been corrected. D.C. Code 1981, §§ 21-523, 21-525. In re Morris, 482 A.2d 369, 1984 D.C. App. LEXIS 480 (1984).

Rehospitalizations.

Revocation of patient's outpatient commitment order was rendered invalid by illegal ten-day detention as involuntary inpatient that preceded it. D.C. Code 1981, §§ 21-501 to 21-592. In re Feenster, 561 A.2d 997, 1989 D.C. App. LEXIS 136 (1989).

Time requirements.

A person detained under a civil commitment statute must be given a hearing within a reasonable time to insure that probable cause exists to believe that confinement is constitutionally and statutorily warranted. Bension v. Meredith, 455 F. Supp. 662, 1978 U.S. Dist. LEXIS 19102 (1978).

Interpretation of time limits under Ervin Act for probable cause hearing on involuntary commitment was issue capable of repetition yet evading review and, thus, would be considered by Court of Appeals despite mootness concerns from fact that patient had moved to another state. D.C. Code 1981, § 21-525. In re Barlow, 634 A.2d 1246, 1993 D.C. App. LEXIS 315 (1993).

Ervin Act's requirement for hearing on probable cause for involuntary commitment within 24 hours of patient's request is satisfied if patient is presented before judicial officer who sets hearing process in motion before deadline and process continues to advance without unreasonable delay, but process need not be completed within 24-hour period. D.C. Code 1981, § 21-525. In re Barlow, 634 A.2d 1246, 1993 D.C. App. LEXIS 315 (1993).

Trial judge's timely calling of case for hearing on probable cause for involuntary commitment satisfied requirement that hearing be held within 24-hours of patient's request, even though trial judge did not preside over case and certified case to another judge who did not begin hearing before deadline; process was begun before deadline and second judge was ready to promptly continue process. D.C. Code 1981, § 21-525. In re Barlow, 634 A.2d 1246, 1993 D.C. App. LEXIS 315 (1993).

Failure of trial court to conduct hearing requested by patient under District of Columbia Hospitalization of the Mentally Ill Act within 24 hours of request, subsequent to patient's emergency hospitalization, violated the Act; court was unable to hold hearing within the requisite 24 hours due to calendar congestion, and hearing was not conducted until approximately 45 hours after patient's request. D.C. Code 1981, § 21-525. In re De Loatch, 532 A.2d 1343, 1987 D.C. App. LEXIS 479 (1987).

Trial court's ultimate determination that probable cause existed to continue emergency hospitalization of patient under District of Columbia Hospitalization of the Mentally Ill Act did not cure court's violation of the Act by failing to hold hearing within 24 hours of patient's request. D.C. Code 1981, §§ 21-501 to 21-592, 21-525. In re De Loatch, 532 A.2d 1343, 1987 D.C. App. LEXIS 479 (1987).

Treatment and therapies.

District of Columbia statute requiring that a person hospitalized in a public hospital for mental illness shall, during his hospitalization, be entitled to medical and psychiatric care and treatment covers persons hospitalized under any statutory authorization but every patient hospitalized for observation is not necessarily entitled to an immediate and full-blown therapeutic program. D.C. Code §§ 21-521, 21-522, 21-525. In re Curry, 452 F.2d 1360, 1971 U.S. App. LEXIS 7548 (C.A.D.C. 1971).

Allegations of involuntary patient in District of Columbia public mental hospital in hospital's proceeding to extend period of hospitalization warranted hearing on whether hospital had taken any step toward observation and diagnosis or whether hospital had provided only custodial care; if patient establishes truth of his allegations, he must either be released or be provided care that is consonant with goals of observation and diagnosis, and ultimately of treatment if deemed necessary under diagnosis. D.C. Code §§ 21-522, 21-523, 21-525. In re Curry, 452 F.2d 1360, 1971 U.S. App. LEXIS 7548 (C.A.D.C. 1971).

Treatment of patient subject to outpatient commitment as involuntarily hospitalized inpatient violated the Hospitalization of the Mentally Ill Act where patient was held for ten days without judicial hearing to determine whether probable cause existed for his hospitalization. D.C. Code 1981, §§ 21-501 to 21-592. In re Feenster, 561 A.2d 997, 1989 D.C. App. LEXIS 136 (1989).

§ 21-526. Extension of maximum periods of time.

(a) If the maximum period of time prescribed by section 21-512, 21-523, 21-524, 21-525 or 21-548, during which an action or determination may or shall be taken, expires on a Saturday, Sunday, or legal holiday, the period may be extended to not later than noon of the next succeeding day which is not a Saturday, Sunday, or legal holiday.

(b) If the maximum period of time prescribed by the sections listed in subsection (a) of this section expires between 12:01 a.m. and 12:00 noon on a Monday or the next business day following a legal holiday, the period shall be extended until 12:00 noon of that day, or, when the maximum period of time prescribed by the sections listed in subsection (a) of this section expires on a legal holiday, the period shall be extended until 12:00 noon of the next business day.

(c) The maximum period of time for detention for emergency observation

and diagnosis may be extended for up to 21 days, if judicial proceedings under subchapter IV of this chapter have been commenced before the expiration of the order entered under section 21-524 and a psychiatrist or qualified psychologist has examined the person who is the subject of the judicial proceedings and is of the opinion that the person being detained remains mentally ill and is likely to injure himself or others as a result of the illness unless the emergency detention is continued. For good cause shown, the Court may extend the period of detention for emergency observation and diagnosis. The period of detention for emergency observation and diagnosis may be extended pursuant to section 21-543(b) or following a hearing before the Commission pursuant to subsections (d) and (e) of this section.

(d) If the Commission, at the conclusion of its hearing pursuant to section 21-542, has found that the person with respect to whom the hearing was held is mentally ill and, because of the mental illness, is likely to injure himself or others if not committed, and has concluded that a recommendation of inpatient commitment is the least restrictive alternative available to prevent the person from injuring himself or others, the detention for emergency observation and diagnosis may be continued by the Department or hospital —

(1) Pending the conclusion of judicial proceedings under subchapter IV of this chapter;

(2) Until the Court enters an order discharging the person; or

(3) Until the Department or hospital determines that continued hospitalization is no longer the least restrictive form of treatment appropriate for the person being detained.

(e) If the Commission, at the conclusion of its hearing, finds that the person is mentally ill, is likely to injure himself or other persons as a result of mental illness if not committed, and that outpatient treatment is the least restrictive form of commitment appropriate, then, within 14 days of the date of the hearing, the person shall be discharged from inpatient status and shall receive outpatient mental health services or mental health supports as an emergency nonvoluntary patient consistent with this subchapter, pending the conclusion of judicial proceedings under subchapter IV of this chapter.

(Sept. 14, 1965, 79 Stat. 754, Pub. L. 89-183, § 1; June 30, 1989, D.C. Law 8-15, § 2, 36 DCR 3695; April 4, 2003 (Dec. 10, 2004), D.C. Law 14-283,§ 2(l)(1), 50 DCR 917; Dec. 10, 2004, 118 Stat. 3473, Pub. L. 108-450, § 4.)

Prior Codifications. — 1981 Ed., § 21-526. 1973 Ed., § 21-526.

Effect of amendments. — D.C. Law 14-283, in subsec. (a), substituted "section 21-512, 21-523, 21-524, 21-525 or 21-548" for "section 21-512, 21-523, 21-524, or 21-525".

Pub. L. 108-450 added subsecs. (c), (d), and (e).

Temporary Amendment of Section. — Section 2(k) of D.C. Law 14-131, in subsec. (a), substituted "section 21-512, 21-523, 21-524, 21-525 or 21-548" for "section 21-512, 21-523, 21-524, or 21-525"; and added subsecs. (c), (d) and (e) to read as follows:

"(c) The maximum period of time for detention for emergency observation and diagnosis may be extended for up to 14 days, if judicial proceedings under subchapter IV of this chapter have been commenced before the expiration of the order entered under section 21-524 and a psychiatrist or qualified psychologist has examined the person who is the subject of the judicial proceedings and is of the opinion that the person being detained remains mentally ill and is likely to injure himself or others as a result of the illness unless the emergency detention is continued.

"(d)(1) If requested by the petitioner, the Commission, at the conclusion of its hearing pursuant to section 21-542, may immediately

order the continued hospitalization of a person detained for emergency observation and diagnosis until the conclusion of judicial proceedings under subchapter IV of this chapter, but only after the Commission has:

"(A) Found that the person with respect to whom the hearing was held is mentally ill and, because of the mental illness, is likely to injure himself or other persons if not committed; and

"(B) Concluded that a recommendation of inpatient commitment is the least restrictive alternative available to prevent the person from injuring himself or others.

"(2) If the Commission orders the continued inpatient detention of a person, it shall promptly notify the court of that fact in writing.

"(3) If requested by the petitioner at the hearing, the Commission may order the immediate transfer of the person being detained to the Department, for inpatient or outpatient mental health services or mental health supports, or may order the continued detention by the Department in a facility certified for emergency observation and diagnosis, pending the conclusion of judicial proceedings under subchapter IV of this chapter. If the Commission orders the continued detention of a person or transfer of a person to the Department, it shall promptly notify the court of that fact in writing.

"(e) If requested by the petitioner, the Commission, at the conclusion of its hearing, may order that the person being detained by the Department continue to receive outpatient mental health services or mental health supports pending the conclusion of judicial proceedings under subchapter IV of this chapter, if at the conclusion of the hearing, the Commission finds that the person is mentally ill, likely to injure himself or others as a result of mental illness if not committed, and that outpatient treatment is the least restrictive form of appropriate commitment. The Commission shall promptly notify the court of the decision regarding continued outpatient services and supports in writing." For applicability of § 2(k)(2) of D.C. Law 14-131, see note following § 21-502.

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition of applicability provision for § 2(d), (k)(2), (m), (q)(3) and (4), (s), and (t) of D.C. Act 14-265, see § 4 of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(k) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(k) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section applicable upon the enactment of certain legislation by the United States Congress, see §§ 2(l) and 3 of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see §§ 2(l) and (3) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 8-15. — Law 8-15, the "District of Columbia Hospitalization of the Mentally Ill Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-72, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on April 18, 1989, and May 2, 1989, respectively. Signed by the Mayor on May 12, 1989, it was assigned Act No. 8-31 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

Editor's notes. — Applicability of §§ 2(d), (e), (l)(2), (n), (r)(3) and (4), (t), and (u) of Law 14-283: Section 3 of Law 14-283 provided that section 2(d), (e), (l)(2), (n), (r)(3) and (4), (t), and (u) shall apply upon the enactment of legislation by the United States Congress that states the following: "Notwithstanding any other law, section 2(d), (e), (l)(2), (r)(3) and (4), (t), and (u) of the Mental Health Civil Commitment Act of 2002, adopted by the Council of the District of Columbia, is enacted into law."

CASE NOTES

ANALYSIS

Appeal.
Cause for extension.
Mootness.
Procedural irregularities.

Appeal.

Hospital had right to appeal denial of petition for involuntary commitment that was de-

nied solely on basis of trial court's interpretation of time limits for probable cause hearing under Ervin Act; merits of commitment petition were not considered and hospital could be repeatedly thwarted by adverse conflicting lower court interpretations of procedural requirements absent appeal. D.C. Code 1981, §§ 21-521 to 21-526. In re Barlow, 634 A.2d 1246, 1993 D.C. App. LEXIS 315 (1993).

Cause for extension.

Failure of trial court to conduct hearing requested by patient under District of Columbia Hospitalization of the Mentally Ill Act within 24 hours of request, subsequent to patient's emergency hospitalization, violated the Act; court was unable to hold hearing within the requisite 24 hours due to calendar congestion, and hearing was not conducted until approximately 45 hours after patient's request. D.C. Code 1981, § 21-525. In re De Loatch, 532 A.2d 1343, 1987 D.C. App. LEXIS 479 (1987).

After court finds in Jackson hearing that defendant is unlikely to become competent in foreseeable future, government must institute civil commitment proceeding, if one is desired, within 30 days, and, while the rule is not inviolable, extension should normally be granted only for extraordinary cause shown. D.C. Code §§ 21-521, 21-523 to 21-525, 21-541, 21-541(a), 21-542 to 21-545, 22-501, 22-507, 22-2307, 24-301(a); U.S. Const. Amend. 14. Thomas v. United States, 418 A.2d 122, 1980 D.C. App. LEXIS 333 (1980).

Mootness.

Challenge to trial court's application of District of Columbia Hospitalization of the Mentally Ill Act was not rendered moot by discharge of patient, since issue raised, concerning required 24-hour hearing, was "capable of repetition yet evading review." D.C. Code 1981, §§ 21-501 to 21-592. In re De Loatch, 532 A.2d 1343, 1987 D.C. App. LEXIS 479 (1987).

Procedural irregularities.

Trial court's ultimate determination that probable cause existed to continue emergency hospitalization of patient under District of Columbia Hospitalization of the Mentally Ill Act did not cure court's violation of the Act by failing to hold hearing within 24 hours of patient's request. D.C. Code 1981, §§ 21-501 to 21-592, 21-525. In re De Loatch, 532 A.2d 1343, 1987 D.C. App. LEXIS 479 (1987).

Independent judicial determination of need for further involuntary hospitalization remedied legal imperfection of original detention, arising from fact that application leading to emergency commitment was signed by physician not empowered by statute to initiate emergency commitment procedure. D.C. Code §§ 21-521 to 21-528. Williams v. Meredith, 407 A.2d 569, 1979 D.C. App. LEXIS 477 (1979).

§ 21-527. Examination and release of person; notice.

(a)(1) The chief clinical officer of the Department or the chief of service of a hospital in which a person is hospitalized under a court order entered pursuant to section 21-524 shall, within 48 hours after the order is entered, have the person examined by a psychiatrist or qualified psychologist.

(2) If the psychiatrist or qualified psychologist, after his examination, certifies that in his opinion the person is not mentally ill to the extent that the person is likely to injure himself or others if not presently detained, the person shall be immediately released.

(3) After the examination required under paragraph (1) of this subsection has been completed, the chief of service of the hospital:

(A) Shall immediately notify the chief clinical officer of the Department of the results of the examination by telephone, telefax, or other electronic means;

(B) Shall immediately send a copy of the results of the examination by mail to the Commission;

(C) Shall immediately send a copy of the results of the examination by mail to the parent or legal guardian of a person under 18 years of age who was committed; and

(D) Shall, within 48 hours, send a copy of the results by mail to the spouse or domestic partner, parents, attorney, legal guardian, or nearest known adult relative of the person examined, if authorized by the person who

was examined consistent with the provisions of the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law 2-136; D.C. Official Code § 7-1201.01 et seq.).

(b)(1) The chief clinical officer of the Department or the chief of service of a hospital in which a person is detained under a court order entered pursuant to section 21-524 or under section 21-526(c) shall immediately release the person from the emergency detention in a hospital if, at any time during the detention, a psychiatrist or qualified psychologist at the hospital or the Department certifies that, based on an examination, it is his opinion that the person is no longer mentally ill to the extent that the person is likely to injure himself or others if not presently detained or that the person could be treated in a less restrictive setting.

(2) After the examination required under paragraph (1) of this subsection has been completed, the chief of service of the hospital:

(A) Shall immediately notify the chief clinical officer of the Department of the results of the examination by telephone, telefax, or other electronic means;

(B) Shall immediately send a copy of the results of the examination by mail to the Commission;

(C) Shall immediately send a copy of the results of the examination by mail to the parent or legal guardian of a person under 18 years of age who was committed; and

(D) Shall, within 48 hours, send a copy of the results by mail to the spouse or domestic partner, parents, attorney, legal guardian, or nearest known adult relative of the person examined, if authorized by the person who was examined consistent with the provisions of the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law 2-136; D.C. Official Code § 7-1201.01 et seq.).

(Sept. 14, 1965, 79 Stat. 754, Pub. L. 89-183, § 1; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(11), 30 DCR 5778; Apr. 4, 2003, D.C. Law 14-283, § 2(m), 50 DCR 917; Sept. 12, 2008, D.C. Law 17-231, § 22(d), 55 DCR 6758.)

Prior Codifications. — 1981 Ed., § 21-527. 1973 Ed., § 21-527.

Effect of amendments. — D.C. Law 14-283 rewrote the section which had read as follows: "§ 21-527. Examination and release of person; notice." "The chief of service of a hospital in which a person is hospitalized under a court order entered pursuant to section 21-524 shall, within 48 hours after the order is entered, have the person examined by a physician or qualified psychologist. If the physician or qualified psychologist, after his examination, certifies that in his opinion the person is not mentally ill to the extent that he is likely to injure himself or others if not presently detained, the person shall be immediately released. The chief of service shall, within 48 hours after the examination has been completed, send a copy of the results thereof by certified or registered mail to the spouse, parents, attorney, legal guardian, or nearest known adult relative of the person examined."

D.C. Law 17-231 substituted "spouse or domestic partner" for "spouse".

Temporary Amendment of Section. — Section 2(l) of D.C. Law 14-131 amended this section to read as follows:

"(a) The chief clinical officer of the Department or the chief of service of a hospital in which a person is hospitalized under a court order entered pursuant to section 21-524 shall, within 48 hours after the order is entered, have the person examined by a psychiatrist or qualified psychologist. If the psychiatrist or qualified psychologist, after his examination, certifies that in his opinion the person is not mentally ill to the extent that the person is likely to injure himself or others if not presently detained, the person shall be immediately released. The chief of service shall immediately

notify the chief clinical officer of the Department of the results of the examination by telephone, telefax, or other electronic means and shall, within 48 hours after the examination has been completed, send a copy of the results by mail to the spouse, parents, attorney, legal guardian, or nearest known adult relative of the person examined, if authorized by the person who is hospitalized consistent with the provisions of the District of Columbia Mental Health Act of 1978, effective March 3, 1979 (D.C. Law 2-136; D.C. Official Code § 7-1201.01 et seq.).

"(b) The chief clinical officer of the Department or the chief of service of a hospital in which a person is detained under a court order entered pursuant to section 21-524 or under section 21-526(c) shall immediately release the person from the emergency detention in a hospital if, at any time during the detention, a psychiatrist or psychologist at the hospital or the Department certifies that, based on an examination, it is his opinion that the person is no longer mentally ill to the extent that the person is likely to injure himself or others if not presently detained or that the person could be treated in a less restrictive setting. The chief of service shall immediately notify the chief clinical officer of the Department of the results of the examination by telephone, telefax, or other electronic means and shall, within 48 hours after the examination has been completed, send a copy of the results by mail to the spouse, parents, attorney, legal guardian, or nearest known adult relative of the person examined, if authorized by the person who was examined consistent with the provisions of the District of Columbia Mental Health Act of 1978, effective March 3, 1979 (D.C. Law 2-136; D.C. Official Code § 7-1201.01 et seq.)."

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(l) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(l) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(m) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(m) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 21-501.

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 21-501.

CASE NOTES

Analysis

Commitment irregularities.
Qualified physician-examiner.
Time requirements.
Validity.

Commitment irregularities.

Defects in application for emergency hospitalization of person believed to be mentally ill are not irrelevant, but, rather, trial court quite properly should take such defects into account insofar as they bear upon reliability and integrity of application and information therein. D.C. Code 1981, §§ 21-524, 21-525, 21-582(a, b). In re Herman, 619 A.2d 958, 1993 D.C. App. LEXIS 21 (1993).

Defects in application form for emergency observation and diagnosis of person believed to be mentally ill did not mandate immediate release, even if physician's application was not based on "personal observation and examination"; application reflected genuine personal involvement in process; moreover, trial court heard three separate witnesses and ample grounds existed for conclusion apart from application form itself. D.C. Code 1981, §§ 21-524, 21-525, 21-582(a, b). In re Herman, 619 A.2d 958, 1993 D.C. App. LEXIS 21 (1993).

Qualified physician-examiner.

Physician-member of the Commission on Mental Health who participated in recommending that an individual should be hospitalized under statutory emergency provision is not a "physician of the person in question" who may file an application for emergency hospitalization. D.C. Code §§ 21-502(c), 21-521. Williams v. Meredith, 407 A.2d 569, 1979 D.C. App. LEXIS 477 (1979).

Independent judicial determination of need for further involuntary hospitalization remedied legal imperfection of original detention, arising from fact that application leading to emergency commitment was signed by physician not empowered by statute to initiate emer-

gency commitment procedure. D.C. Code §§ 21-521 to 21-528. Williams v. Meredith, 407 A.2d 569, 1979 D.C. App. LEXIS 477 (1979).

Time requirements.

When a person is subject to emergency hospitalization on basis that he is believed to be mentally ill, during course of judicial proceedings, hospital is required to file judicial hospitalization petition within seven-day period established in statute setting forth maximum period for observation. D.C. Code 1981, §§ 21-523, 21-528. In re Herman, 619 A.2d 958, 1993 D.C. App. LEXIS 21 (1993).

Validity.

Statutory standard for involuntary commitment, requiring, inter alia, that one be likely "to injure himself or other persons," was sufficiently definite to survive constitutional challenge of vagueness. D.C. Code §§ 21-501 et seq., 21-521, 21-527, 21-544, 21-545. In re Alexander, 336 F. Supp. 1305, 1972 U.S. Dist. LEXIS 15503 (1972).

§ 21-528. Detention of person pending judicial proceedings.

Notwithstanding any other provision of this subchapter, the administrator of a hospital in which a person is hospitalized under this subchapter may, if judicial proceedings for his hospitalization have been commenced under subchapter IV of this chapter, detain the person in the hospital during the course of the judicial proceedings.

(Sept. 14, 1965, 79 Stat. 754, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-528. 1973 Ed., § 21-528.

Effect of amendments. — D.C. Law 14-283 substituted "commitment" for "hospitalization".

Temporary Repeal of Section. — Section 2(m) of D.C. Law 14-131 repealed this section.

For applicability of § 2(m) of D.C. Law 14-131, see note following § 21-502.

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Temporary Amendment of Section. — Section 2(n) of D.C. Law 14-131 amended this section.

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition of applicability provision of § 2(d), (k)(2), (m), (q)(3) and (4), (s), and (t) of D.C. Act 14-265, see § 4 of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) repeal of section, see § 2(m) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) repeal of section, see § 2(m) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) repeal of section applicable upon the enactment of certain legislation by the United States Congress, see §§ 2(n) and 3 of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) repeal of section, see §§ 2(n) and (3) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

CASE NOTES

ANALYSIS

Construction and application.
Construction with other sections.
Late filing or defects in proceedings.
Mootness.
Presumptions and burden of proof.
Rehospitalization.
Time requirements.

Construction and application.

Court of Appeals construes Hospitalization of the Mentally Ill Act narrowly where its application results in curtailment of individual's

liberty. D.C. Code 1981, §§ 21-501 to 21-592. In re Reed, 571 A.2d 801, 1990 D.C. App. LEXIS 59 (1990).

Construction with other sections.

Statute providing that a person admitted to hospital for emergency observation and diagnosis under Hospitalization of Mentally Ill Act may not be detained for period over 48 hours unless hospital administrator has filed petition for order authorizing continued hospitalization for period not to exceed seven days from entry of order must be read in connection with another provision of Hospitalization of Mentally Ill Act providing that hospital administrator may, if judicial proceedings for hospitalization have been commenced, detain person in hospital during course of the judicial proceedings. D.C. Code 1961, §§ 21-523, 21-528. In re Perry, 269 F. Supp. 729, 1967 U.S. Dist. LEXIS 8792 (D.D.C1967).

Late filing or defects in proceedings.

Defendant found not guilty by reason of insanity and confined pursuant to summary commitment procedures which were inappropriately applied to him was not entitled to immediate release based on the fact that inappropriate commitment procedures had been used, but rather, it was within power of hospital and district court to have defendant detained until proceedings were complete, and only if Government elected not to institute appropriate civil commitment process or if it were determined that defendant were no longer a danger to himself or to others, did he have to be unconditionally released. D.C. Code 1981, §§ 21-528, 24-301(d, k). Sanderlin v. United States, 794 F.2d 727, 1986 U.S. App. LEXIS 26586 (C.A.D.C. 1986).

Where petitioner voluntarily presented himself at university hospital and requested treatment, doctor at this hospital advised petitioner that he could not be admitted there and suggested that he file application for treatment at a public mental hospital, which petitioner was unwilling to do, and doctor then executed an application for emergency hospitalization and sent petitioner in an ambulance to mental hospital which admitted petitioner as involuntary emergency patient, and there was nothing to indicate that petitioner resisted treatment at mental hospital, petitioner's detention as an emergency, involuntary patient was null and void. D.C. Code §§ 21-522, 21-523, 21-528, 21-541. In re Curry, 470 F.2d 368, 1972 U.S. App. LEXIS 7847 (C.A.D.C. 1972).

Government could not rely on late-filed petition to authorize continued involuntary confinement of assertedly mentally ill patient during pendency of judicial proceedings regardless of fact that subsequent judicial review occurred. D.C. Code 1981, §§ 21-501 to 21-592. In re Reed, 571 A.2d 801, 1990 D.C. App. LEXIS 59 (1990).

Independent judicial determination of need for further involuntary hospitalization remedied legal imperfection of original detention, arising from fact that application leading to emergency commitment was signed by physician not empowered by statute to initiate emergency commitment procedure. D.C. Code §§ 21-521 to 21-528. Williams v. Meredith, 407 A.2d 569, 1979 D.C. App. LEXIS 477 (1979).

Mootness.

Appeal from commitment order, based on claim that patient was deprived of due process of law because jury did not determine beyond a reasonable doubt that he was mentally ill and consequently dangerous, was not moot because of patient's discharge, where, in light of patient's fixed delusions and testimony indicating likelihood of their persistence, prospect of patient again being subjected to commitment proceedings was not remote, and where collateral consequences of being adjudged mentally ill remained to plague patient. D.C. Code §§ 21-523, 21-524, 21-528, 21-545, 21-545(b). In re Ballay, 482 F.2d 648, 1973 U.S. App. LEXIS 9680 (C.A.D.C. 1973).

Case in which petitioner challenged validity of his prior emergency confinement as a person mentally ill and dangerous to himself or others presented sufficient adversariness to avoid mootness in constitutional sense, although hospital had initiated judicial proceeding for long-term hospitalization and had later unconditionally released petitioner. D.C. Code §§ 21-522, 21-523, 21-528. In re Curry, 470 F.2d 368, 1972 U.S. App. LEXIS 7847 (C.A.D.C. 1972).

Presumptions and burden of proof.

Proof of mental illness and dangerousness in involuntary civil commitment proceedings must be beyond a reasonable doubt rather than by preponderance of evidence. D.C. Code §§ 21-521, 21-523, 21-524, 21-528, 21-545, 21-545(b); U.S. Const. Amends. 5, 14. In re Ballay, 482 F.2d 648, 1973 U.S. App. LEXIS 9680 (C.A.D.C. 1973).

When an individual is detained on an emergency basis prior to a judicial determination of a need for his involuntary hospitalization, the government has the burden of showing probable cause to justify detaining him. D.C. Code §§ 21-521 to 21-528. Williams v. Meredith, 407 A.2d 569, 1979 D.C. App. LEXIS 477 (1979).

Rehospitalization.

Hospital need not rely on emergency provisions of the District of Columbia Hospitalization of the Mentally Ill Act in accomplishing an involuntarily committed outpatient's return for brief reevaluation or treatment since resort to these procedures would be duplicative, the patient having already been lawfully committed.

D.C. Code 1981, §§ 21-521, 21-528. In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Time requirements.

Physician's petition for judicial hospitalization of patient commenced the judicial proceedings so that detention of patient during course of proceedings was authorized even though petition was not filed until almost four weeks after patient had been admitted to hospital. D.C. Code 1961, §§ 21-521 to 21-523, 21-528, 21-541. In re Perry, 269 F. Supp. 729, 1967 U.S. Dist. LEXIS 8792 (D.D.C1967).

When a person is subject to emergency hospitalization on basis that he is believed to be mentally ill, during course of judicial proceedings, hospital is required to file judicial hospitalization petition within seven-day period established in statute setting forth maximum period for observation. D.C. Code 1981, §§ 21-523, 21-528. In re Herman, 619 A.2d 958, 1993 D.C. App. LEXIS 21 (1993).

Subchapter IV. Commitment Under Court Order.

§ 21-541. Petition to Commission; copy to person affected.

(a) Proceedings for the judicial commitment of a person in the District of Columbia may be commenced by the filing of a petition with the Commission by his spouse, parent, or legal guardian, by a physician or a qualified psychologist, by a duly accredited officer or agent of the Department, by the Director of the Department or the Director's designee, or by an officer authorized to make arrests in the District of Columbia. The petition shall be accompanied by:

(1) a certificate of a physician or qualified psychologist stating that he has examined the person and is of the opinion that the person is mentally ill, and because of the illness is likely to injure himself or other persons if not committed; or

(2) a sworn written statement by the petitioner that:

(A) the petitioner has good reason to believe that the person is mentally ill, and, because of the illness, is likely to injure himself or other persons if not committed; and

(B) the person has refused to submit to examination by a physician or qualified psychologist.

(b) Within three days after the Department receives a petition filed under subsection (a) of this section, the Department shall send a copy of the petition by registered mail to the person with respect to whom it was filed.

(Sept. 14, 1965, 79 Stat. 754, Pub. L. 89-183, § 1; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(12), 30 DCR 5778; Apr. 30, 1988, D.C. Law 7-104, § 6(g), 35 DCR 147; Dec. 18, 2001, D.C. Law 14-56, § 116(g)(2), 48 DCR 7674; April 4, 2003, D.C. Law 14-283, § 2(p), 50 DCR 917; Mar. 13, 2004, D.C. Law 15-105, § 57, 51 DCR 881.)

Cross references. — Criminally insane persons, payment of hospital expenses, see § 24-501.

Information needed for civil commitment proceedings, see § 7-1204.02.

Prior Codifications. — 1981 Ed., § 21-541. 1973 Ed., § 21-541.

Effect of amendments. — D.C. Law 14-56, in subsec. (a), substituted "Department of Mental Health" for "Department of Human Services".

D.C. Law 14-283 rewrote the introductory paragraph of subsec. (a); in par. (1) of subsec. (a), substituted "not committed" for "allowed to remain at liberty"; and in par. (2)(A) of subsec. (a), substituted "not committed" for "allowed to remain at liberty". Prior to amendment, the introductory paragraph of subsec. (a) had read

as follows: "(a) Proceedings for the judicial hospitalization of a person in the District of Columbia may be commenced by the filing of a petition with the Department of Mental Health by his spouse, parent, or legal guardian, by a physician or a qualified psychologist, by a duly accredited officer or agent of the Department of Mental Health, or by an officer authorized to make arrests in the District of Columbia. The petition shall be accompanied by:"

D.C. Law 15-105 validated previously made technical corrections.

Temporary Amendment of Section. — Section 16(g)(2) of D.C. Law 14-51, in subsec. (a), substituted "Department of Mental Health" for "Department of Human Services".

Section 19(b) of D.C. Law 14-51 provided that the act shall expire after 225 days of its having taken effect.

Section 2(o) of D.C. Law 14-131, in subsec. (a), in the introductory language, substituted "commitment" for "hospitalization"; and in pars. (1) and (2)(A), substituted "not committed" for "allowed to remain at liberty".

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 116(g)(2) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

For temporary (90 day) amendment of section, see § 16(g)(2) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(g)(2) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 2(o) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(o) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(p) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(p) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 21-501.

Legislative history of Law 7-104. — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 21-501.

Legislative history of Law 14-51. — For D.C. Law 14-51, see notes following § 21-521.

Legislative history of Law 14-56. — For Law 14-56, see notes following § 21-521.

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

Legislative history of Law 15-105. — Law 15-105, the "Technical Amendments Act of 2003", was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

CASE NOTES

ANALYSIS

Commitment of criminal defendants.
Constitutional rights of person to be committed.
Disposition by commission.
Grounds for petition.
Judicial review.
Out-patient affected persons.
Physician-petitioners.
Presumptions and burden of proof.
Procedural irregularities.
Residence of affected person.
Subpoenas.
Time requirements.
Waiver of trial.

Commitment of criminal defendants.

Even if District of Columbia statute, providing that no person accused of an offense shall be acquitted on the ground that he was insane at the time of its commission unless his insanity, regardless of who raises the issue, is affirmatively established by preponderance of the evidence, may be constitutionally applied to a federal court prosecution of a federal offense, the statute did not require automatic commitment to all defendants acquitted by reason of insanity, regardless of who raised the issue of insanity. D.C. Code §§ 21-541 to 21-545, 24-301(d, j). United States v. Wright, 511 F.2d 1311, 1975 U.S. App. LEXIS 15941 (C.A.D.C. 1975).

Status of inpatient at mental hospital could be changed from voluntary to involuntary; patient was subjected to arrest warrant for sexually assaulting hospital employee, found to be mentally ill, incompetent to stand trial and danger to himself and others, and continued to resist treatment by proclaiming that he was not mentally ill, even as he began requiring supervision to ensure that he took his medication and did not engage in violent, unprovoked sexual behavior. D.C. Code 1981, § 21-541. In re Clark, 700 A.2d 781, 1997 D.C. App. LEXIS 230 (1997).

Man, who had been charged with crime, committed to mental hospital due to incompetency to stand trial and found unlikely to regain his competency in the reasonable foreseeable future, was not denied equal protection by Government's delaying commencing civil commitment proceedings for 42 days after the finding was made, where subsequent periods of confinement were relatively brief, civil commitment was accomplished within three months of finding and court was acquainted with medical report conclusion that man would be dangerous to himself or others if released. D.C. Code §§ 21-521, 21-523 to 21-525, 21-541, 21-541(a), 21-542 to 21-545, 22-501, 22-507, 22-2307, 24-301(a); U.S. Const. Amend. 14. Thomas v. United States, 418 A.2d 122, 1980 D.C. App. LEXIS 333 (1980).

Constitutional rights of person to be committed.

Equal protection rights of voluntary patient in mental hospital were not violated when he was converted to involuntary inpatient status after he exposed himself to counselor and attempted to assault her; he was afforded same arrest and commitment procedure as any person subject to petition for judicial hospitalization. D.C. Code 1981, § 21-541. In re Clark, 700 A.2d 781, 1997 D.C. App. LEXIS 230 (1997).

In an involuntary civil commitment trial, due process required proof beyond a reasonable doubt that respondent was mentally ill and, because of the illness, was likely to injure herself or other persons if allowed to remain at liberty. D.C. Code §§ 21-521, 21-541; U.S. Const. Amend. 5. In re Hodges, 325 A.2d 605, 1974 D.C. App. LEXIS 276 (1974).

Disposition by commission.

Individual on rolls of Commission on Mental Health Services as a voluntary outpatient who meets statutory criteria for civil commitment may be involuntarily committed as an outpatient, when Commission on Mental Health Services or Superior Court's Commission on Mental Health proposes nothing more than conversion of individual's outpatient status from voluntary to involuntary. D.C. Code 1981, § 21-541. In re Johnson, 691 A.2d 628, 1997 D.C. App. LEXIS 34 (1997).

Grounds for petition.

Inmate's murder of her husband, which occurred over 13 years before commitment hearing, and her numerous past convictions for assault and battery were not too remote to provide support for commitment order. D.C. Code 1981, § 21-541. In re Gaither, 626 A.2d 920, 1993 D.C. App. LEXIS 153 (1993).

Drug addiction or intoxication, even though it may produce dangerous behavior, does not constitute mental illness within meaning of Ervin Act, which governs procedure for hospitalizing and committing the mentally ill. (Per Mack, J., with one Judge concurring.) D.C. Code 1981, § 21-541 et seq. In re Stokes, 546 A.2d 356, 1988 D.C. App. LEXIS 100 (1988).

Judicial review.

Dangerousness demonstrated by the commission of a crime and subsequent acquittal by reason of insanity constitute rational basis for disparity in statutory provisions which require court approval for release of mental patient who has been acquitted of criminal charges by reason of insanity but which do not provide for any court review of release of a civil committee. D.C. Code§§ 21-541 to 21-545, 24-301(e). United States v. Ecker, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

Absent jury demand, trial court at hearing after Commission on Mental Health found patient was mentally ill and likely to injure others if allowed to remain at liberty and recommended hospitalization had authority to evaluate Commission hearing and to reject Commission report and on remand court should consider merits of patient's contentions and take additional evidence if necessary. D.C. Code §§ 21-513, 21-541 et seq., 21-544, 21-545(a, b). In re Walls, 442 F.2d 749, 1971 U.S. App. LEXIS 12494 (C.A.D.C. 1971).

Failure of patient who had been involuntarily committed to exhaust his administrative remedies under the Privacy Act was not bar to requested equitable relief that hospital be required to amend records to indicate that commitment was voluntary rather than involuntary. D.C. Code 1981, § 21-501 et seq. In re Blair, 510 A.2d 1048, 1986 D.C. App. LEXIS 361 (1986).

Out-patient affected persons.

If mental patient's alleged misconduct was solely product of drug use and intoxication, such use would not provide basis for revoking outpatient commitment under Ervin Act. (Per Mack, J., with one Judge concurring.) D.C. Code 1981, § 21-541 et seq. In re Stokes, 546 A.2d 356, 1988 D.C. App. LEXIS 100 (1988).

Trial court erred in revoking mental patient's outpatient status where hospital failed to pro-

duce evidence sufficient to establish that indeterminate hospitalization was least restrictive treatment alternative. (Per Mack, J., with one Judge concurring.) D.C. Code 1981, § 21-541 et seq. In re Stokes, 546 A.2d 356, 1988 D.C. App. LEXIS 100 (1988).

Absent evidence that patient was mentally ill and dangerous due to mental illness, trial court erred in revoking patient's outpatient status based solely on testimony of doctor which consisted of vague, conclusory statements and which was not based on doctor's personal knowledge of behavior which she characterized. (Per Mack, J., with one Judge concurring.) D.C. Code 1981, § 21-541 et seq. In re Stokes, 546 A.2d 356, 1988 D.C. App. LEXIS 100 (1988).

Under the Hospitalization of the Mentally Ill Act, new findings of mental illness and dangerousness must be made at hearing for revocation of outpatient status. (Per Mack, J., with one Judge concurring.) D.C. Code 1981, § 21-541 et seq. In re Stokes, 546 A.2d 356, 1988 D.C. App. LEXIS 100 (1988).

Physician-petitioners.

Physician's petition for judicial hospitalization of patient commenced the judicial proceedings so that detention of patient during course of proceedings was authorized even though petition was not filed until almost four weeks after patient had been admitted to hospital. D.C. Code 1961, §§ 21-521 to 21-523, 21-528, 21-541. In re Perry, 269 F. Supp. 729, 1967 U.S. Dist. LEXIS 8792 (D.D.C1967).

In process of petitioning for involuntary commitment of individual, hospital superintendent was not, merely by virtue of being physician himself, required to personally conduct examination of individual within 72 hours prior to making petition; petition, accompanied by certificate of physician who actually did conduct examination, was sufficient under statutes. D.C. Code 1981, §§ 21-501, 21-521 to 21-523, 21-524(b), 21-541(a), (a)(1), (a)(2)(A), 21-582(a, b). Dobbs v. Duncan, 458 A.2d 719, 1983 D.C. App. LEXIS 344 (1983).

Presumptions and burden of proof.

Where burden of proof on issue of defendant's mental condition was placed on defendant at release hearing and defendant's request for jury trial was denied, defendant's commitment to mental institution following his acquittal by reason of insanity was not valid under the civil commitment statute of the District of Columbia. D.C. Code §§ 21-541 to 21-545, 24-301, 24-301(d), (d)(1), (j). United States v. Wright, 511 F.2d 1311, 1975 U.S. App. LEXIS 15941 (C.A.D.C. 1975).

There is justification for preponderance of proof standard for commitment of the insanity-acquitted even if higher standard is required prior to civil commitment for propensity and even though there is no justification for denying the insanity-acquitted the right to jury trial that is recognized for those involved in civil commitment proceedings. D.C. Code §§ 11-101 et seq., 21-541(a), 21-545, 24-301(d, e). United States v. Brown, 478 F.2d 606, 1973 U.S. App. LEXIS 12287 (C.A.D.C. 1973).

Burden of proof was not impermissibly shifted to inmate in commitment process to prove she was not mentally ill and dangerous, in violation of her due process rights; Commission on Mental Health had already determined that inmate was mentally ill, and hearing was only to determine least restrictive treatment alternative. D.C. Code 1981, §§ 21-541, 21-544, 21-545(a); U.S. Const.Amends. 5, 14; Mental Health Rules 4-6. In re Gaither, 626 A.2d 920, 1993 D.C. App. LEXIS 153 (1993).

To commit mentally deficient person under Hospitalization of the Mentally Ill Act, it is necessary for government to prove that individual suffers from mental illness and that danger-productive behavior of individual results from mental illness. (Per Mack, J., with one Judge concurring.) D.C. Code 1981,§ 21-541 et seq. In re Stokes, 546 A.2d 356, 1988 D.C. App. LEXIS 100 (1988).

Procedural irregularities.

Where petitioner voluntarily presented himself at university hospital and requested treatment, doctor at this hospital advised petitioner that he could not be admitted there and suggested that he file application for treatment at a public mental hospital, which petitioner was unwilling to do, and doctor then executed an application for emergency hospitalization and sent petitioner in an ambulance to mental hospital which admitted petitioner as involuntary emergency patient, and there was nothing to indicate that petitioner resisted treatment at mental hospital, petitioner's detention as an emergency, involuntary patient was null and void. D.C. Code §§ 21-522, 21-523, 21-528, 21-541. In re Curry, 470 F.2d 368, 1972 U.S. App. LEXIS 7847 (C.A.D.C. 1972).

Residence of affected person.

Insofar as "residence" was at issue in determining retarded orphan's ability to claim medical care from the District of Columbia government, the matter to be decided was whether, in light of all available indicia of residence, independent of her confinement at St. Elizabeths Hospital, orphan's presence in the District could properly be accounted for as the product of something more than a temporary sojourn; burden on the residence issue was with the government. D.C. Code §§ 3-110, 21-541, 21-551, 32-405. District of Columbia v. H.J.B., 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Subpoenas.

Respondent was entitled to evidentiary hearing on his motion to quash subpoena ordering

him to submit to psychiatric examination at Commission of Mental Health pursuant to private, non-emergency petition for judicial hospitalization, given nature of respondent's challenge and fact that there was no prior Commission screening of petition. D.C. Code 1981, § 21-541(a)(2). In re Johnson, 699 A.2d 362, 1997 D.C. App. LEXIS 186 (1997).

Time requirements.

After court finds in Jackson hearing that defendant is unlikely to become competent in foreseeable future, government must institute civil commitment proceeding, if one is desired, within 30 days, and, while the rule is not inviolable, extension should normally be granted only for extraordinary cause shown. D.C. Code §§ 21-521, 21-523 to 21-525, 21-541, 21-541(a), 21-542 to 21-545, 22-501, 22-507, 22-2307, 24-301(a); U.S. Const. Amend. 14. Thomas v. United States, 418 A.2d 122, 1980 D.C. App. LEXIS 333 (1980).

Waiver of trial.

Waiver of trial following institution of civil commitment proceedings constituted an admission by patients that they were mentally ill and dangerous to themselves or others, permitting trial court to order any disposition appropriate under District of Columbia Hospitalization of the Mentally Ill Act. D.C. Code 1981, §§ 21-541(a), 21-545(b). In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

§ 21-542. Hearing by Commission; presence and rights of person affected; hearing regarding liability.

(a) The Commission shall promptly examine a person alleged to be mentally ill after the filing of a petition under section 21-541 and shall thereafter promptly hold a hearing on the issue of his mental illness. The hearing shall be conducted in a manner consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the person named in such petition. In conducting the hearing, the Commission shall hear testimony of any person whose testimony may be relevant and shall receive all relevant evidence which may be offered. A person with respect to whom a hearing is held under this section may, in his discretion, be present at the hearing, to testify, and to present and cross-examine witnesses.

(b) The Commission shall also hold a hearing in order to determine liability under the provisions of section 21-586 for the expenses of commitment of the alleged mentally ill person, if it is determined that he is mentally ill and should be committed as provided under this chapter. The hearing may be conducted separately from the hearing on the issue of mental illness. If conducted separately, it may be conducted by the Chairman of the Commission alone.

(Sept. 14, 1965, 79 Stat. 755, Pub. L. 89-183, § 1; Apr. 4, 2003, D.C. Law 14-283, § 2(q), 50 DCR 917.)

Prior Codifications. — 1981 Ed., § 21-542. 1973 Ed., § 21-542.

Effect of amendments. — D.C. Law 14-283, in subsec. (a), substituted "a manner" for "as informal a manner as may be"; and in subsec. (b), substituted "commitment" for "hospitalization" and substituted "committed" for "hospitalized".

Temporary Amendment of Section. — Section 2(p) of D.C. Law 14-131, in subsec. (b), in the first sentence, substituted "commitment" for "hospitalization", and "committed" for "hospitalized".

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(p) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(p) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(q) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(q) of Mental Health Civil Commitment Congressional Review Emergency Act of

2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

CASE NOTES

ANALYSIS

Civil or criminal commitment procedures.
Constitutional rights of person affected.
Contempt.
Cost of treatment.
Examination of witnesses.
In general.
Physician-commissioner rights and duties.
Subpoenas.
Time requirements.

Civil or criminal commitment procedures.

Defendant found not guilty by reason of insanity and confined pursuant to summary commitment procedures which were inappropriately applied to him was not entitled to immediate release based on the fact that inappropriate commitment procedures had been used, but rather, it was within power of hospital and district court to have defendant detained until proceedings were complete, and only if Government elected not to institute appropriate civil commitment process or if it were determined that defendant were no longer a danger to himself or to others, did he have to be unconditionally released. D.C. Code 1981, §§ 21-528, 24-301(d, k). Sanderlin v. United States, 794 F.2d 727, 1986 U.S. App. LEXIS 26586 (C.A.D.C. 1986).

Under District of Columbia law, more deliberative process of civil commitment, rather than summary commitment procedure applicable to person tried for offense who raises defense of insanity and is acquitted solely on ground that he was insane at time of its commission, should apply to defendant who did not plead or rely on insanity defense but was nevertheless found not guilty by reason of insanity. D.C. Code 1981, § 24-301(d). Sanderlin v. United States, 794 F.2d 727, 1986 U.S. App. LEXIS 26586 (C.A.D.C. 1986).

Constitutional rights of person affected.

In commitment proceeding, admission of evidence of patient's conduct prior to previously unsuccessful commitment hearing did not violate patient's due process rights; patient's recent and continuing behavior provided clear reason for District to initiate new civil commitment proceedings, and statute provided effective means for identification and dismissal of petitions grounded on outdated and insubstantial evidence of current mental illness and dangerousness. D.C. Code 1981, §§ 21-523, 21-542, 21-544; U.S. Const.Amend. 14. In re Katz, 638 A.2d 684, 1994 D.C. App. LEXIS 36 (1994).

Respondent in civil commitment case is entitled to services of psychiatric expert upon a showing of financial inability to obtain the expert and the demonstration that the service is necessary to an adequate defense; deference must be given to judgment of counsel, but that does not prevent trial court from exercising its discretion. D.C. Code 1981, § 11-2605(a, c). In re Morrow, 463 A.2d 689, 1983 D.C. App. LEXIS 421 (1983).

Prisoner is entitled to notice, judicial hearing, and, if requested, to jury trial before he can be involuntarily transferred from prison to mental institution. D.C. Code 1973, §§ 21-501 et seq., 24-302; U.S. Const.Amend. 14. In re Hurt, 437 A.2d 590, 1981 D.C. App. LEXIS 401 (1981).

The 1964 revision of the District of Columbia's civil commitment laws had primary purpose to safeguard constitutional rights of the mentally ill, i.e., to assure fair commitment and release procedures and adequate treatment during confinement. D.C. Code § 21-501 et seq. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

Because liberty is jeopardized by the civil commitment procedure, demands of due process must be satisfied. D.C. Code § 21-501 et seq. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

Contempt.

Even though petitioner had offered to withdraw petition for judicial hospitalization, respondent's appeal of order holding him in civil contempt of court order requiring him to submit to psychiatric examination at Commission on Mental Health was not moot; appeal challenged ongoing threat to respondent's asserted constitutionally-protected rights, even if petition that gave rise to order compelling respondent to submit to psychiatric examination were to be withdrawn, he would continue to be at risk of being once again ordered to submit to psychiatric examination without opportunity for appellate review and guidance on legality of subpoena procedures currently in effect, and truncated proceeding in trial court might have had continuing adverse impact on respondent. D.C. Code 1981, § 11-942. In re Johnson, 699 A.2d 362, 1997 D.C. App. LEXIS 186 (1997).

Cost of treatment.

District of Columbia has obligation to pay costs of medical treatment of one whom District

has involuntarily civilly committed, whether or not individual is resident, until such time as another person or jurisdiction assumes responsibility for those costs. D.C. Code 1981, § 21-545. In re Myrick, 624 A.2d 1222, 1993 D.C. App. LEXIS 125 (1993).

Superior Court had authority under the Ervin Act to order District of Columbia to pay for civil committee's care outside of District. D.C. Code 1981, §§ 21-501, 21-511 to 21-513, 21-545(b), 21-586. In re Myrick, 624 A.2d 1222, 1993 D.C. App. LEXIS 125 (1993).

Examination of witnesses.

In civil commitment case, permitting expert to testify as to his reexamination of respondent following the statutorily prescribed examination did not violate respondent's rights. D.C. Code 1981, § 21-501 et seq. In re Morrow, 463 A.2d 689, 1983 D.C. App. LEXIS 421 (1983).

In civil commitment case, permitting expert to testify as to his reexamination of respondent following the statutorily prescribed examination did not violate respondent's rights. D.C. Code 1981, § 21-501 et seq. In re Morrow, 463 A.2d 689, 1983 D.C. App. LEXIS 421 (1983).

Even if Fourth Amendment exclusionary rule was applicable to psychiatric examination of person alleged to be mentally ill, recommendations of Commission on Mental Health and testimony of two members of Commission who were psychiatrists and who examined defendant prior to hearing was not required to be suppressed at trial since examination was not trial, examination was not hearing, nor was it "proceeding" requiring assistance of counsel. D.C. Code§§ 21-542(a), 21-543; U.S. Const. Amend. 4. In re Holmes, 422 A.2d 969, 1980 D.C. App. LEXIS 384 (1980).

In general.

Aid of District of Columbia Commission on Mental Health is available in habeas corpus proceedings as well as commitment proceedings. D.C. Code 1961, §§ 21-542, 21-544. Lake v. Cameron, 364 F.2d 657, 1966 U.S. App. LEXIS 6103 (C.A.D.C. 1966), writ of certiorari denied by 382 U.S. 863, 86 S. Ct. 126, 15 L. Ed. 2d 100, 1965 U.S. LEXIS 875 (1965).

Physician-commissioner rights and duties.

Fact that two members of Commission on Mental Health who were psychiatrists examined person alleged to be mentally ill before hearing did not render such examination "proceeding" within meaning of statute requiring assistance of counsel at all proceedings before Commission on Mental Health. D.C. Code §§ 21-542(a), 21-543. In re Holmes, 422 A.2d 969, 1980 D.C. App. LEXIS 384 (1980).

Physician-member of the Commission on Mental Health who participated in recommending that an individual should be hospitalized under statutory emergency provision is not a "physician of the person in question" who may file an application for emergency hospitalization. D.C. Code §§ 21-502(c), 21-521. Williams v. Meredith, 407 A.2d 569, 1979 D.C. App. LEXIS 477 (1979).

Subpoenas.

Respondent was entitled to evidentiary hearing on his motion to quash subpoena ordering him to submit to psychiatric examination at Commission of Mental Health pursuant to private, non-emergency petition for judicial hospitalization, given nature of respondent's challenge and fact that there was no prior Commission screening of petition. D.C. Code 1981, § 21-541(a)(2). In re Johnson, 699 A.2d 362, 1997 D.C. App. LEXIS 186 (1997).

Before subpoena may issue at its request on private, non-emergency petition for judicial hospitalization, Commission on Mental Health must test sufficiency of petition and obtain additional information, if necessary, so that it can then examine person alleged to be mentally ill and hold hearing. D.C. Code 1981,§ 21-503(b). In re Johnson, 699 A.2d 362, 1997 D.C. App. LEXIS 186 (1997).

In context of private, non-emergency petition for judicial hospitalization, there must be opportunity to challenge subpoena ordering respondent to submit to psychiatric examination at Commission of Mental Health; trial court has discretion to determine scope of hearing, including whether further evidence is required, consistent with constitutional considerations of privacy and liberty and statutory mandate that Commission undertake prompt examination. D.C. Code 1981, § 21-503. In re Johnson, 699 A.2d 362, 1997 D.C. App. LEXIS 186 (1997).

Time requirements.

After court finds in Jackson hearing that defendant is unlikely to become competent in foreseeable future, government must institute civil commitment proceeding, if one is desired, within 30 days, and, while the rule is not inviolable, extension should normally be granted only for extraordinary cause shown. D.C. Code §§ 21-521, 21-523 to 21-525, 21-541, 21-541(a), 21-542 to 21-545, 22-501, 22-507, 22-2307, 24-301(a); U.S. Const. Amend. 14. Thomas v. United States, 418 A.2d 122, 1980 D.C. App. LEXIS 333 (1980).

Man, who had been charged with crime, committed to mental hospital due to incompetency to stand trial and found unlikely to regain his competency in the reasonable foreseeable future, was not denied equal protection by Government's delaying commencing civil commitment proceedings for 42 days after the finding was made, where subsequent periods of confinement were relatively brief, civil commitment was accomplished within three months of

finding and court was acquainted with medical report conclusion that man would be dangerous to himself or others if released. D.C. Code §§ 21-521, 21-523 to 21-525, 21-541, 21-541(a), 21-542 to 21-545, 22-501, 22-507, 22-2307, 24-301(a); U.S. Const. Amend. 14. Thomas v. United States, 418 A.2d 122, 1980 D.C. App. LEXIS 333 (1980).

§ 21-543. Representation by counsel; compensation; recess.

(a) The person alleged to be mentally ill and, because of the mental illness, likely to injure himself or others shall be represented by counsel in any proceeding before the Commission or the court, and if he fails or refuses to obtain counsel, the court shall appoint counsel to represent him. The counsel so appointed shall be awarded compensation by the court for his services in an amount determined by it to be fair and reasonable. The compensation shall be charged against the estate of the individual for whom the counsel was appointed, or against any unobligated funds of the Commission, as the court in its discretion directs. The Commission or the court, as the case may be, shall, at the request of the counsel so appointed, grant a recess in the proceeding to give the counsel an opportunity to prepare his case.

(b) The Commission may not grant a continuance for counsel to prepare his case for more than 5 days. The Commission may grant continuances for good cause shown for periods of up to 14 days. If the Commission grants a continuance, the emergency observation and detention of the person about whom the hearing is being held shall be extended for the duration of the continuance.

(Sept. 14, 1965, 79 Stat. 755, Pub. L. 89-183, § 1; April 4, 2003 (Dec. 10, 2004), D.C. Law 14-283, § 2(r)(1), (2), 50 DCR 917; Dec. 10, 2004, 118 Stat. 3474, Pub. L. 108-450, § 5.)

Prior Codifications. — 1981 Ed., § 21-543. 1973 Ed., § 21-543.

Effect of amendments. — D.C. Law 14-283 designated the existing text as subsection (a); and in the newly designated subsec. (a), substituted "person alleged to be mentally ill and, because of the mental illness, likely to injure himself or others" for "alleged mentally ill person".

Pub. L. 108-450, deleted the last sentence in subsec. (a); and added subsec. (b). The last sentence of subsec. (a) had read as follows: "A recess may not be granted for more than five days."

Temporary Amendment of Section. — Section 2(q) of D.C. Law 14-131 designated the existing text as subsec. (a); substituted "person alleged to be mentally ill and, because of the mental illness, likely to injure himself or others" for "alleged mentally ill person"; deleted the last sentence; and added subsec. (b) to read as follows:

"(b) The Commission may not grant a recess for counsel to prepare his case for more than 5 days. The Commission may, with the consent of the parties, grant a recess for good cause shown for a period of up to 14 days. If the Commission grants a continuance, the Commission also may authorize the extension of the emergency observation and detention of the person about whom the hearing is being held for the duration of the continuance." For applicability of § 2(q)(3) and (4) of D.C. Law 14-131, see note following § 21-502.

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition of applicability provision of § 2(d), (k)(2), (m), (q)(3) and (4), (s), and (t) of D.C. Law 14-265, see § 4 of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(q) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(q) of Mental Health Commitment

Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section applicable upon the enactment of certain legislation by the United States Congress, see §§ 2(r) and 3 of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see §§ 2(r) and (3) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

Editor's notes. — For applicability of D.C. Law 14-131, see note following § 21-502.

Applicability of §§ 2(d), (e), (l)(2), (n), (r)(3) and (4), (t), and (u) of Law 14-283: Section 3 of Law 14-283 provided that section 2(d), (e), (l)(2), (n), (r)(3) and (4), (t), and (u) shall apply upon the enactment of legislation by the United States Congress that states the following: "Notwithstanding any other law, section 2(d), (e), (l)(2), (r)(3) and (4), (t), and (u) of the Mental Health Civil Commitment Act of 2002, adopted by the Council of the District of Columbia, is enacted into law."

CASE NOTES

ANALYSIS

Appointment of counsel.
Argument of counsel.
Constitutional rights of person affected.
Criminal or civil commitment.
Discovery.
In general.
Necessity for counsel.
Waiver of right to counsel.

Appointment of counsel.

Public Defender Service should be appointed to represent patient who has been involuntarily detained on grounds that he has symptoms of mental illness and is likely to injure himself or others, at least until retained counsel notes his appearance. D.C. Code §§ 2-2222(a)(3), 21-524, 21-525, 21-543. In re Barnard, 455 F.2d 1370, 1971 U.S. App. LEXIS 6472 (C.A.D.C. 1971).

When corporation counsel elects not to proceed with judicial stage of an involuntary civil commitment proceeding, court may permit private petitioner, through his or her counsel, to press case for commitment, since there is no statutory or constitutional command forbidding such. D.C. Code § 21-501 et seq. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

Required use of government prosecutors in criminal-juvenile context did not indicate a congressional intent to require such prosecutors for civil commitments, let alone to preclude private litigation in the commitment field. D.C. Code §§ 16-2305, 21-501 et seq., 23-101. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

Where current statute was plain and unambiguous on question of governmental representation of private petitioners, there was no basis to presume congressional intent to permit court appointment of corporation counsel, though previous repealed statute had provided that corporation counsel or one of his assistants should represent petitioner in any proceeding in which a commitment of allegedly mentally ill person at public expense was sought. D.C. Code §§ 1-301, 21-544, 21-545. District of Columbia v. Pryor, 366 A.2d 141, 1976 D.C. App. LEXIS 417 (1976).

To accept or create additional obligation to obey court order for corporation counsel to undertake representation of private citizens in mental health cases would be antithetical to statute setting forth duties of corporation counsel and would also be contrary to separation of powers doctrine, and thus not only was corporation counsel not required by statute to represent private petitioners, seeking involuntary civil commitment of adult son or daughter, but superior court judge had no power to make such an appointment. D.C. Code §§ 1-301, 11-101, 21-544, 21-545. District of Columbia v. Pryor, 366 A.2d 141, 1976 D.C. App. LEXIS 417 (1976).

Argument of counsel.

In hospital superintendent's action for judicial hospitalization of patient alleged to be mentally ill, patient's attorney's representation to jury in her opening statement that anticipated testimony of social worker would reveal that patient's wife who was seeking commitment had self-serving motive was proper as social worker, although not qualified by court as expert in intrafamily dynamics, was permitted to describe some of the interaction between patient and his wife and to state her impressions of their relationship. D.C. Code §§ 11-721, 21-501 et seq. In re Lomax, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

Constitutional rights of person affected.

Transfer of prisoners to mental hospital requires protective procedures at least similar to those provided in 1964 Civil Commitment Act providing full system of procedural safeguards

before finding of mental illness can be made. D.C. Code §§ 21-501 et seq., 21-543, 21-545 to 21-547, 24-106, 24-302, 24-303. Matthews v. Hardy, 420 F.2d 607, 1969 U.S. App. LEXIS 10958 (C.A.D.C. 1969), writ of certiorari denied by 397 U.S. 1010, 90 S. Ct. 1231, 25 L. Ed. 2d 423, 1970 U.S. LEXIS 2387 (1970).

Private litigation of civil commitments does not violate constitutional separation of powers, given fact that, because civil commitment scheme permits, but does not require, the participation by a corporation counsel, there is no infringement upon an exclusive, executive prerogative. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

Criminal or civil commitment.

Under statute providing that if director of department of corrections believes prisoner is mentally ill, he can refer prisoner to psychiatrist and, if psychiatrist concurs in that belief, director can then transfer prisoner to mental hospital, before prisoner can be involuntarily transferred he is entitled to judicial hearing, jury trial, and same rights of notice, counsel and cross-examination as are provided for in 1964 Civil Commitment Act and same procedures for release from hospital as are embodied in the Act. D.C. Code§§ 21-501 et seq., 21-543, 21-545 to 21-547, 24-106, 24-302, 24-303. Matthews v. Hardy, 420 F.2d 607, 1969 U.S. App. LEXIS 10958 (C.A.D.C. 1969), writ of certiorari denied by 397 U.S. 1010, 90 S. Ct. 1231, 25 L. Ed. 2d 423, 1970 U.S. LEXIS 2387 (1970).

Discovery.

Patient's counsel must be provided with copy of affidavit of superintendent of hospital within 24 hours of involuntarily committed patient's return for reevaluation, to accord with statutory mandate that patients be afforded benefit of counsel. D.C. Code 1981, §§ 1-2702(a)(1)(C), 21-543; Mental Health Rule 11. In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

In general.

When corporation counsel elects not to proceed with judicial stage of an involuntary civil commitment proceeding, court may permit private petitioner, through his or her counsel, to press case for commitment, since there is no statutory or constitutional command forbidding such. D.C. Code § 21-501 et seq. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

Neither fact that 1964 revision of District of Columbia's civil commitment laws deleted reference in prior statute to a petitioner's use of private counsel nor overall policies of 1964 legislation precluded private litigation. D.C. Code§ 21-501 et seq.; D.C. Code 1961, § 21-312. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

Necessity for counsel.

Where question was raised whether representation by counsel or guardian ad litem was required in incompetency proceeding before Mental Health Commission and Court of Appeals held the commitment invalid because of absence of representation before both the commission and the court, the ruling as to need for representation before commission was not obiter dictum even if commitment could have been found to be invalid for lack of representation in court alone. D.C. Code 1951, §§ 21-308, 21-311, 21-314. Dooling v. Overholser, 243 F.2d 825, 1957 U.S. App. LEXIS 2999 (C.A.D.C. 1957).

Fact that two members of Commission on Mental Health who were psychiatrists examined person alleged to be mentally ill before hearing did not render such examination "proceeding" within meaning of statute requiring assistance of counsel at all proceedings before Commission on Mental Health. D.C. Code §§ 21-542(a), 21-543. In re Holmes, 422 A.2d 969, 1980 D.C. App. LEXIS 384 (1980).

Even if Fourth Amendment exclusionary rule was applicable to psychiatric examination of person alleged to be mentally ill, recommendations of Commission on Mental Health and testimony of two members of Commission who were psychiatrists and who examined defendant prior to hearing was not required to be suppressed at trial since examination was not trial, examination was not hearing, nor was it "proceeding" requiring assistance of counsel. D.C. Code§§ 21-542(a), 21-543; U.S. Const. Amend. 4. In re Holmes, 422 A.2d 969, 1980 D.C. App. LEXIS 384 (1980).

Private litigation of civil commitment, absent participation of a public prosecutor, did not adversely affect committee's legitimate liberty interest without an offsetting benefit to public, given fact that committee failed to demonstrate alleged evils of private litigation of failing to provide "screening" and "compromise" functions inherent in prosecutorial discretion, of failing upon findings of mental illness and dangerousness, to utilize all available resources to provide least restrictive, appropriate treatment and of private petitioner's self-interest, possibly vindictive motivation. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

Required use of government prosecutors in criminal-juvenile context did not indicate a congressional intent to require such prosecutors for civil commitments, let alone to preclude private litigation in the commitment field. D.C. Code §§ 16-2305, 21-501 et seq., 23-101. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

Waiver of right to counsel.

An alleged mentally ill person may not waive the right to counsel and appear pro se before the Commission in a civil commitment hearing. In re Burke, 114 WLR 1881 (Super. Ct.).

§ 21-544. Determinations of Commission; report to court; copy to person affected; right to jury trial.

If the Commission finds, after a hearing under section 21-542, that the person with respect to whom the hearing was held is not mentally ill or if mentally ill, is not mentally ill to the extent that he is likely to injure himself or other persons if not committed, the Commission shall immediately order his release and notify the court of that fact in writing. If the Commission finds, after the hearing, that the person with respect to whom the hearing was held is mentally ill, and because of the illness is likely to injure himself or other persons if not committed, the Commission shall promptly report that fact, in writing, to the Superior Court of the District of Columbia. The report shall contain the Commission's findings of fact, conclusions of law, and recommendations. A copy of the report of the Commission shall be served personally on the person with respect to whom the hearing was held and his attorney. A person with respect to whom the hearing was held with respect to whom the report is made has the right to demand a jury trial, and the Commission, orally and in writing, shall advise him of this right.

(Sept. 14, 1965, 79 Stat. 755, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(c)(3); Apr. 4, 2003, D.C. Law 14-283, § 2(s), 50 DCR 917.)

Prior Codifications. — 1981 Ed., § 21-544. 1973 Ed., § 21-544.

Effect of amendments. — D.C. Law 14-283 substituted "not committed" for "allowed to remain at liberty", substituted "person with respect to whom the hearing was held" for "alleged mentally ill person", and substituted "A person" for "An alleged mentally ill person".

Temporary Amendment of Section. — Section 2(r)of D.C. Law 14-131 substituted "not committed" for "allowed to remain at liberty" wherever it appeared; in the fourth sentence, substituted "person with respect to whom the hearing was held" for "alleged mentally ill person"; and in the last sentence, substituted "A person" for "An alleged mentally ill person".

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(r) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(r) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(s) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(s) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

CASE NOTES

ANALYSIS

Admissibility of evidence.
Constitutional rights of committee.
Habeas corpus relief.
In general.
Notice rights.
Presumptions and burden of proof.
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Validity of related laws.

Admissibility of evidence.

Consideration of a person's likely danger to community is appropriate in civil commitment proceedings but is irrelevant in a criminal trial. D.C. Code §§ 21-544, 21-545. Rouse v. Cameron, 387 F.2d 241, 1967 U.S. App. LEXIS 5201 (C.A.D.C. 1967).

Treatability of one having a mental disease or defect is not an appropriate consideration at a criminal trial, and its relevance may even be doubtful in a civil commitment determination. D.C. Code §§ 21-544, 21-545. Rouse v. Cameron, 387 F.2d 241, 1967 U.S. App. LEXIS 5201 (C.A.D.C. 1967).

Practicing psychiatrists who had treated patient were qualified to give expert opinion in civil commitment case as to whether patient was likely to injure himself and others in future due to his failure to take prescribed psychotropic medication. Fed.Rules Evid.Rule 702, 18 U.S.C.; D.C. Code 1981, §§ 21-522, 21-544, 21-902(b)(2), 24-301(e)(1, 2). In re Melton, 597 A.2d 892, 1991 D.C. App. LEXIS 273 (1991).

Even if Fourth Amendment exclusionary rule was applicable to psychiatric examination of person alleged to be mentally ill, recommendations of Commission on Mental Health and testimony of two members of Commission who were psychiatrists and who examined defendant prior to hearing was not required to be suppressed at trial since examination was not trial, examination was not hearing, nor was it "proceeding" requiring assistance of counsel. D.C. Code§§ 21-542(a), 21-543; U.S. Const. Amend. 4. In re Holmes, 422 A.2d 969, 1980 D.C. App. LEXIS 384 (1980).

Constitutional rights of committee.

Commitment for any purpose constitutes significant deprivation of liberty that requires due process protection and state must have constitutionally adequate purpose for confinement. U.S. Const.Amends. 5, 14. Jones v. United States, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95 (U.S.Dist.Col. 1983).

In commitment proceeding, admission of evidence of patient's conduct prior to previously unsuccessful commitment hearing did not violate patient's due process rights; patient's recent and continuing behavior provided clear reason for District to initiate new civil commitment proceedings, and statute provided effective means for identification and dismissal of petitions grounded on outdated and insubstantial evidence of current mental illness and dangerousness. D.C. Code 1981, §§ 21-523, 21-542, 21-544; U.S. Const.Amend. 14. In re Katz, 638 A.2d 684, 1994 D.C. App. LEXIS 36 (1994).

Burden of proof was not impermissibly shifted to inmate in commitment process to prove she was not mentally ill and dangerous, in violation of her due process rights; Commission on Mental Health had already determined that inmate was mentally ill, and hearing was only to determine least restrictive treatment alternative. D.C. Code 1981, §§ 21-541, 21-544, 21-545(a); U.S. Const.Amends. 5, 14; Mental Health Rules 4-6. In re Gaither, 626 A.2d 920, 1993 D.C. App. LEXIS 153 (1993).

Since purpose of proceedings before Commission on Mental Health is not to adjudicate issue of commitment in final manner, but, rather, it is to enable Commission, panel of neutral experts, to perform its preliminary screening function and to report responsibly its findings and recommendation to court, person alleged to be mentally ill was not denied due process when Commission made its findings of fact without applying any set standard of proof to evidence presented. U.S. Const. Amends. 5, 14. In re Holmes, 422 A.2d 969, 1980 D.C. App. LEXIS 384 (1980).

Because liberty is jeopardized by the civil commitment procedure, demands of due process must be satisfied. D.C. Code § 21-501 et seq. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

Inasmuch as deprivation of liberty under criminal law is penal, whereas involuntary civil confinement of mentally ill has a more benign, treatment goal in addition to objective of protecting public, guarantees of due process in the commitment field cannot be ascertained simply by a reference to the criminal law process; instead, courts must ask what is fundamentally fair under circumstances, taking into account the interests at stake and the corresponding rights of the respective parties. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

Granting of stay pending hospital superintendent's appeal from dismissal of petition for judicial hospitalization of patient alleged to be mentally ill was constitutional in that mental health commission's hearing and findings were adequate to justify detention pending appeal and, thus, stay presented no due process problem. D.C. Code §§ 11-721, 21-501 et seq. In re Lomax, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

Interests at stake in involuntary civil commitment proceedings are of transcendent proportions, and, regardless of civil label which is affixed to such proceedings, courts have seen fit to extend protections to them which normally are reserved for criminal adjudications. D.C. Code § 21-501 et seq. In re Lomax, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

Habeas corpus relief.

In reviewing on habeas corpus a civilly committed patient's confinement in a mental hospital, the court should satisfy itself that no less onerous disposition would serve purpose of commitment. D.C. Code §§ 21-501 to 21-591, 21-544, 21-545(b). Covington v. Harris, 419 F.2d 617, 1969 U.S. App. LEXIS 13253 (C.A.D.C. 1969).

Where petitioner had not himself sought introduction of insanity defense at his trial and had not acquiesced in assertion of that defense, his commitment to hospital for the mentally ill following his acquittal by reason of insanity

was not authorized and he was entitled to habeas corpus. D.C. Code §§ 21-501 to 21-591, 21-544, 21-545, 22-3204, 24-301(a, d). Rouse v. Cameron, 387 F.2d 241, 1967 U.S. App. LEXIS 5201 (C.A.D.C. 1967).

Aid of District of Columbia Commission on Mental Health is available in habeas corpus proceedings as well as commitment proceedings. D.C. Code 1961, §§ 21-542, 21-544. Lake v. Cameron, 364 F.2d 657, 1966 U.S. App. LEXIS 6103 (C.A.D.C. 1966), writ of certiorari denied by 382 U.S. 863, 86 S. Ct. 126, 15 L. Ed. 2d 100, 1965 U.S. LEXIS 875 (1965).

In general.

The principle of the least restrictive alternative consistent with legitimate purposes of commitment to hospital inheres in the very nature of civil commitment, which entails an extraordinary deprivation of liberty justifiable only when the respondent is mentally ill to the extent that he is likely to injure himself or other persons if allowed to remain at liberty. D.C. Code § 21-544. Covington v. Harris, 419 F.2d 617, 1969 U.S. App. LEXIS 13253 (C.A.D.C. 1969).

Statute to effect that when it appears to court that accused is of unsound mind or is mentally incompetent so as to be unable to understand proceedings against him court may order accused committed for observation and treatment if necessary did not authorize trial judge's affording hearing to determine for commitment purposes mental condition of accused found not guilty by reason of insanity, applying release standards of 1964 Hospitalization of the Mentally Ill Act or extending to accused rights which the 1964 Act guaranteed only to those civilly committed. D.C. Code 1961, § 24-301(a); D.C. Code §§ 21-501, 21-544. Cameron v. Mullen, 387 F.2d 193, 1967 U.S. App. LEXIS 7257 (C.A.D.C. 1967).

Notice rights.

Where patient was not given required statutory notice of court hearing leading to adjudication that he was of unsound mind and he did not learn of decree until he returned to District of Columbia, after an absence, about a year after its date, he was entitled to have decree set aside, and court's denial of a petition which he had filed before he had learned that he had been adjudged of unsound mind and which sought review of mental health commission report and recommendations did not make issues presented on petition for review of decree adjudging him of unsound mind res judicata. D.C. Code 1951, §§ 21-301 to 21-333, 21-311; Fed.Rules Civ.Proc. rules 60(b)(6), 81(a)(1), 18 U.S.C.; U.S.Dist.Ct.Rules, D.C., rule 1(b). Lafferty v. District of Columbia, 277 F.2d 348, 1960 U.S. App. LEXIS 5113 (C.A.D.C. 1960).

Patient who is returned to hospital for reevaluation following his commitment to outpatient treatment and his counsel must be informed in writing that hospital must either release him after the fifth day of institutional care and observation, or thereafter move for a prompt adversary judicial hearing seeking the permanent revocation of his outpatient status. D.C. Code 1981, § 21-544. In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Superior court mental health rule which provides for notification of right to appeal from adverse order in civil commitment proceeding, mandating such notification only to respondent patient, did not give petitioner in involuntary commitment proceeding right of appeal after jury verdict was rendered in favor of patient. D.C. Code §§ 11-721, 21-501 et seq., 21-545(b). In re Lomax, 386 A.2d 1185, 1978 D.C. App. LEXIS 377 (1978).

Presumptions and burden of proof.

Even if there is defined standard of proof requirement in proceedings of Commission on Mental Health, person alleged to be mentally ill was not prejudiced by Commission's failure to comply with stand of proof where there was full trial in which jury, independent of Commission, found that individual was mentally ill and was danger to herself. U.S. Const. Amends. 5, 14. In re Holmes, 422 A.2d 969, 1980 D.C. App. LEXIS 384 (1980).

Right to trial by jury.

Absent jury demand, trial court at hearing after Commission on Mental Health found patient was mentally ill and likely to injure others if allowed to remain at liberty and recommended hospitalization had authority to evaluate Commission hearing and to reject Commission report and on remand court should consider merits of patient's contentions and take additional evidence if necessary. D.C. Code §§ 21-513, 21-541 et seq., 21-544, 21-545(a, b). In re Walls, 442 F.2d 749, 1971 U.S. App. LEXIS 12494 (C.A.D.C. 1971).

Criminal acquittee was not entitled, postcommitment, to jury determination that he was mentally ill and dangerous by clear and convincing evidence, though determination was required for initial civil commitment. D.C. Code 1981, §§ 21-544, 21-545. Reese v. United States, 614 A.2d 506, 1992 D.C. App. LEXIS 231 (1992).

Validity of related laws.

Statutory standard for involuntary commitment, requiring, inter alia, that one be likely "to injure himself or other persons," was sufficiently definite to survive constitutional challenge of vagueness. D.C. Code §§ 21-501 et seq., 21-521, 21-527, 21-544, 21-545. In re Al-

exander, 336 F. Supp. 1305, 1972 U.S. Dist. LEXIS 15503 (1972).

§ 21-545. Hearing and determination by court or jury; order; witnesses; jurors.

(a) Upon the receipt by the court of a report referred to in section 21-544, the court shall promptly set the matter for hearing and shall cause a written notice of the time and place of the final hearing to be served personally upon the person with respect to whom the report was made and his attorney, together with notice that he has five days following the date on which he is so served within which to demand a jury trial or a trial by the Court. The demand may be made by the person or by anyone in his behalf. If a jury trial or a trial by the Court is demanded within the five-day period, it shall be accorded by the court with all reasonable speed. If a timely demand for jury trial or a trial by the Court is not made, the court shall determine the person's mental condition on the basis of the report of the Commission, or on such further evidence in addition to the report as the court requires.

(b)(1) If the Court or jury finds that the person is not mentally ill or is not likely to injure himself or others as a result of mental illness, the Court shall dismiss the petition and order the person's release.

(2) If the Court or jury finds that the person is mentally ill and, because of that mental illness, is likely to injure himself or others if not committed, the Court may order the person's commitment to the Department or to any other facility, hospital, or mental health provider that the Court believes is the least restrictive alternative consistent with the best interests of the person and the public. An order of commitment issued pursuant to this paragraph shall be for a period of one year.

(c) The psychiatrists and qualified psychologists who are members of the Commission shall be competent and compellable witnesses at a hearing or trial held pursuant to this chapter.

(d) The jury to be used in any case where a jury trial is demanded under this chapter shall be impaneled, upon order of the Court, from the jurors in attendance upon other branches of the Court, who shall perform the services in addition to and as part of their duties in the Court.

(Sept. 14, 1965, 79 Stat. 756, Pub. L. 89-183, § 1; Apr. 4, 2003 (Dec. 10, 2004), D.C. Law 14-283, § 2(t), 50 DCR 917; Dec. 10, 2004, 118 Stat. 3474, Pub. L. 108-450, § 6(a).)

Prior Codifications. — 1981 Ed., § 21-545. 1973 Ed., § 21-545.

Effect of amendments. — Pub. L. 108-450, in subsec. (a), substituted "jury trial or a trial by the Court" for "jury trial"; rewrote subsec. (b); and added subsecs. (c) and (d). Prior to amendment, subsec. (b) had read as follows: "(b) If the court or jury, as the case may be, finds that the person is not mentally ill, the court shall dismiss the petition and order his release. If the court or jury finds that the person is mentally ill and, because of that illness, is likely to injure himself or other persons if allowed to remain at liberty, the court may order his hospitalization for an indeterminate period, or order any other alternative course of treatment which the court believes will be in the best interests of the person or of the public. The Commission, or a member thereof, shall be competent and compellable witnesses at a hearing or jury trial held pursuant to this chapter. The jury to be used in any case where a jury

trial is demanded under this chapter shall be impaneled, upon order of the court, from the jurors in attendance upon other branches of the court, who shall perform the services in addition to and as part of their duties in the court."

Temporary Amendment of Section. — Section 2(s) of D.C. Law 14-131, in subsec. (a), substituted "jury trial or a trial by the court" for "jury trial" wherever it appeared; and amended subsec. (b) to read as follows:

"(b) If the court or jury finds that the person is not mentally ill or is not likely to injure himself or others as a result of mental illness, the court shall dismiss the petition and order the person's release. If the court or jury finds that the person is mentally ill and, because of that mental illness, is likely to injure himself or others if not committed, the court may order the person's commitment to the Department or to any other facility, hospital, or mental health provider, which the court believes is the least restrictive alternative consistent with the best interests of the person and the public. The period of commitment shall not exceed one year. The physician-members and psychologist-members of the Commission shall be competent and compellable witnesses at a hearing or trial held pursuant to this chapter. The jury to be used in any case where a jury trial is demanded under this chapter shall be impaneled, upon order of the court, from the jurors in attendance upon other branches of the court, who shall perform the services in addition to and as part of their duties in the court." For applicability of § 2(s) of D.C. Law 14-131, see note following § 21-502.

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — Section 2(t) of D.C. Law 14-131 added § 21-545.01 to read as follows:

"§ 21-545.01. Renewal of commitment status by Commission; review by court.

"(a) At least 60 days prior to the expiration of an order of commitment issued pursuant to section 21-545, the chief clinical officer of the Department, or the chief of service of the facility, hospital, or mental health provider to which the person is committed may petition the Commission for a renewal of the order of commitment for that person. The petition shall be supported by a certificate of a psychiatrist or qualified psychologist stating that he has examined the person and is of the opinion that the person is mentally ill, and because of the illness is likely to injure himself or other persons if not committed. The term of the renewed commitment order shall not exceed the length of the original term of commitment.

"(b) Within 3 days after the Commission receives a petition filed under subsection (a) of this section, the Commission shall send a copy of the petition and supporting certificate by registered mail to the person with respect to whom it was filed. The Commission shall send a copy of the petition and supporting certificate to the person's attorney within 3 days after the petition is filed.

"(c) The Commission shall promptly examine a person for whom a petition is filed under subsection (a) of this section, and, in accordance with the procedures described in sections 21-542 and 21-543, shall thereafter promptly hold a hearing on the issue of the person's mental illness and whether, as a result of a mental illness, the person is likely to injure himself or other persons if not committed.

"(d) If the Commission finds, after a hearing under subsection (c) of this section, that the person with respect to whom the hearing was held is no longer mentally ill, or is not mentally ill to the extent that the person is likely to injure himself or other persons if not committed, the Commission shall immediately order the termination of the commitment and notify the court of that fact in writing. If the Commission finds, after the hearing, that the person with respect to whom the hearing was held remains mentally ill to the extent that the person is likely to injure himself or others if not committed, the Commission shall order the renewal of the commitment of the person for an additional term not to exceed the length of the original commitment, and shall promptly report that fact, in writing, to the Superior Court of the District of Columbia. The report shall contain the Commission's findings of fact and conclusions of law. A copy of the report of the Commission shall be served by registered mail on the person with respect to whom the hearing was held and by mail on the person's attorney.

"(e) A person for whom the Commission orders renewed commitment pursuant to subsection (d) of this section may seek a review of the Commission's decision by the Superior Court of the District of Columbia, pursuant to D.C. Official Code § 11-1732, and the Commission, orally and in writing, shall advise the person of this right."

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition of applicability provision of § 2(d), (k)(2), (m), (q)(3) and (4), (s), and (t) of D.C. Act 14-265, see § 4 of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(s) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) addition of § 21-545.01, see § 2(t) of Mental Health Commit-

ment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(s) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) addition of § 21-545.01, see § 2(t) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section applicable upon the enactment of certain legislation by the United States Congress, see §§ 2(t) and 3 of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) addition of § 21-545.01 applicable upon the enactment of certain legislation by the United States Congress, see §§ 2(u) and 3 of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Editor's notes. — For applicability of D.C. Law 14-131, see note following § 21-502.

Section 6(b) of Pub. L. 108-450, 118 Stat. 3472, the District of Columbia Mental Health Civil Commitment Modernization Act of 2004, provided: "Effective Date.—The amendments made by this section shall apply with respect to trials under section 21-545, District of Columbia Code, which are initiated on or after the date of the enactment of this Act." Applicability of §§ 2(d), (e), (l)(2), (n), (r)(3) and (4), (t), and (u) of Law 14-283: Section 3 of Law 14-283 provided that section 2(d), (e), (l)(2), (n), (r)(3) and (4), (t), and (u) shall apply upon the enactment of legislation by the United States Congress that states the following: "Notwithstanding any other law, section 2(d), (e), (l)(2), (r)(3) and (4), (t), and (u) of the Mental Health Civil Commitment Act of 2002, adopted by the Council of the District of Columbia, is enacted into law."

CASE NOTES

Analysis

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Orders committing individuals to hospital supervision pursuant to District of Columbia Hospitalization of the Mentally Ill Act were final for purposes of judicial review, since trial court committed patients to indeterminate course of involuntary treatment and in doing so disposed of cases on merits leaving court with nothing remaining to do but docket already issued orders. D.C. Code 1981, §§ 11-721(a)(1), 21-501 et seq. In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Admissibility of evidence.

In proceeding for commitment as dangerous due to mental illness a defendant who had been found not guilty of crime by reason of insanity, asking expert psychiatric witnesses whether defendant was dangerous was not reversible error under the circumstances. United States v. Ashe, 478 F.2d 661, 1973 U.S. App. LEXIS 10915 (C.A.D.C. 1973).

Even if admission of certain testimony by psychiatrists, in proceeding in which patient was committed under Hospitalization of Mentally Ill Act, was error on ground that testimony was hearsay violating patient's rights to confrontation, such error was not prejudicial, in view of sufficient other evidence warranting

finding that patient was likely to injure himself or others. D.C. Code § 21-545(b); U.S. Const. Amend. 6. In re Penn, 443 F.2d 663, 1970 U.S. App. LEXIS 5978 (C.A.D.C. 1970).

Consideration of a person's likely danger to community is appropriate in civil commitment proceedings but is irrelevant in a criminal trial. D.C. Code §§ 21-544, 21-545. Rouse v. Cameron, 387 F.2d 241, 1967 U.S. App. LEXIS 5201 (C.A.D.C. 1967).

Treatability of one having a mental disease or defect is not an appropriate consideration at a criminal trial, and its relevance may even be doubtful in a civil commitment determination. D.C. Code §§ 21-544, 21-545. Rouse v. Cameron, 387 F.2d 241, 1967 U.S. App. LEXIS 5201 (C.A.D.C. 1967).

In commitment hearing, collateral estoppel did not apply to bar introduction of evidence of patient's conduct prior to previously unsuccessful commitment hearing, where none of evidence of earlier conduct which District sought to prove was offered at prior hearing, and thus acts were not in any sense the subject of prior actual litigation. In re Katz, 638 A.2d 684, 1994 D.C. App. LEXIS 36 (1994).

Evidence of prior determination by jury in civil commitment proceeding is inadmissible at later commitment hearing and counsel may not mention it to jury. D.C. Code 1981, § 21-545(b). In re Samuels, 507 A.2d 150, 1986 D.C. App. LEXIS 307 (1986).

In hospital superintendent's action for judicial hospitalization of patient alleged to be mentally ill, had the government alluded to a previous proceeding in which patient had been adjudged mentally ill and dangerous, and encouraged the jury to take note of that fact, such would be grounds for a mistrial. D.C. Code § 21-501 et seq. In re Lomax, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

Petitioner for involuntary commitment may introduce relevant and otherwise admissible evidence relating to not only the alleged conduct outlined in the petition, but also to the alleged conduct testified about during the hearing before the Commission, the findings of fact and medical conclusions contained in the report, and to the recommendations issued by the Commission. In re Taylor, 112 WLR 1629 (Super. Ct.).

Appellate review.

Appeal from commitment order, based on claim that patient was deprived of due process of law because jury did not determine beyond a reasonable doubt that he was mentally ill and consequently dangerous, was not moot because of patient's discharge, where, in light of patient's fixed delusions and testimony indicating likelihood of their persistence, prospect of patient again being subjected to commitment proceedings was not remote, and where collateral consequences of being adjudged mentally ill remained to plague patient. D.C. Code §§ 21-523, 21-524, 21-528, 21-545, 21-545(b). In re Ballay, 482 F.2d 648, 1973 U.S. App. LEXIS 9680 (C.A.D.C. 1973).

Where verdict of not guilty by reason of insanity resulted in commitment for examination culminating in an order for continuation of commitment of defendant as dangerous due to mental illness, where appeal was taken from commitment order, and where issue underlying both that appeal and appeal from finding of guilt implicit in acquittal by reason of insanity was the sufficiency of the Government's case, issue could be considered without determination of whether bare verdict of not guilty by reason of insanity was freighted with sufficiently substantial indicia of finality to support appeal. Fed.Rules App.Proc. rule 4(b), 18 U.S.C. United States v. Ashe, 478 F.2d 661, 1973 U.S. App. LEXIS 10915 (C.A.D.C. 1973).

Patient, who was committed under Hospitalization of Mentally Ill Act, whose testimony was responsive to questions of court and counsel, and who evinced capacity to observe and full knowledge of events in relation to which he testified, was not entitled to relief on appeal on theory that, due to his mental illness, his testimony was so inherently unreliable that no conclusions could be drawn from it. D.C. Code § 21-545(b). In re Penn, 443 F.2d 663, 1970 U.S. App. LEXIS 5978 (C.A.D.C. 1970).

Commission on Mental Health Services could appeal order dismissing commitment petition on grounds that individual could not be involuntarily committed as outpatient because he was listed on Commission's rolls as a voluntary outpatient; contrary to individual's contention, dismissal was on legal rather than factual grounds, and unless appellate court answered legal question whether and, if so, how individual may be involuntarily civilly committed when classified as a voluntary outpatient, Commission would likely be plagued with inconsistent rulings by trial courts. In re Johnson, 691 A.2d 628, 1997 D.C. App. LEXIS 34 (1997).

Appellate court would exercise its discretion to hear merits of appeal by Commission on Mental Health Services of dismissal of petition for involuntary civil commitment of individual for outpatient psychiatric treatment even though Commission did not appear to dispute that case was moot in sense that Commission had no concrete interest in outcome of appeal; while case was possibly not "capable of repetition, yet evading review" in strict sense, it was nonetheless capable of repetition without review, and case presented important legal question of whether and, if so, how individual may be involuntarily civilly committed when classified as a voluntary outpatient. In re Johnson, 691 A.2d 628, 1997 D.C. App. LEXIS 34 (1997).

Government has limited right to appeal denial of involuntary commitment petition in Ervin Act cases that implicate fundamental questions about procedure by which statutorily prescribed hospitalization or commitment process is completed, even though general remedy for denial of petition is to begin entire commitment procedure over again. D.C. Code 1981, §§ 21-501 to 21-592. In re Barlow, 634 A.2d 1246, 1993 D.C. App. LEXIS 315 (1993).

Where there was a strong likelihood that hospital superintendent would prevail on appeal from trial court's order dismissing superintendent's petition for judicial hospitalization of patient, where, whether or not superintendent of hospital himself would be irreparably injured, a denial of stay pending superintendent's appeal would have presented a risk of substantial harm to patient's wife as patient had previously attacked her, where stay undoubtedly benefited patient himself, and where public interest called for a stay, in light of possibility that patient might attack persons other than his wife, granting of stay pending appeal was proper. D.C. Code §§ 11-721, 21-501 et seq. In re Lomax, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

If hospital superintendent's petition for involuntary civil commitment of mental patient had been granted and patient had claimed that prejudicial error was committed in trial, patient could not be denied right to appeal simply because retrial would be directed toward a temporally different mental condition than that which was at issue in the first proceeding. D.C. Code §§ 11-721, 21-501 et seq. In re Lomax, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

Arguments and conduct of counsel.

In hospital superintendent's action for judicial hospitalization of patient alleged to be mentally ill, patient's counsel's opening remarks to effect that hospital's expert witness was "chagrined" at having failed to secure patient's involuntary commitment in prior trial and that patient had been tried by jury some months before in another mental health proceeding and that there the jury had concluded that patient did not present a danger to himself or to others were prejudicial error, despite judge's instruction to cure error and despite fact that government witness did make passing mention of prior jury trial. D.C. Code §§ 21-501 et seq., 21-521, 21-545(b). In re Lomax, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

In hospital superintendent's action for judicial hospitalization of patient alleged to be mentally ill, patient's counsel's opening remarks to effect that hospital's expert witness was "chagrined" at having failed to secure patient's involuntary commitment in prior trial and that patient had been tried by jury some months before in another mental health proceeding and that there the jury had concluded that patient did not present a danger to himself or to others were prejudicial error, despite judge's instruction to cure error and despite fact that government witness did make passing mention of prior jury trial. D.C. Code §§ 21-501 et seq., 21-521, 21-545(b). In re Lomax, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

Constitutional rights of affected person.

When criminal defendant established by preponderance of evidence that he was not guilty of crime by reason of insanity, due process clause permitted Government, on basis of insanity defense, to confine him to mental institution until such time as he had regained his sanity or was no longer danger to himself or society and he could be confined in hospital for period longer than he could have been incarcerated had he been convicted. D.C. Code 1981, §§ 21-545(b), 24-301(d)(1, 2), (e, j); U.S. Const.Amend. 14. Jones v. United States, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95 (U.S.Dist.Col. 1983).

All patients who had been involuntarily committed to public mental health facility located in the District of Columbia in civil proceedings prior to date preponderance of the evidence standard under which they were committed was declared unconstitutional were entitled to judicial review of their present commitment status under the prevailing constitutional standard of clear and convincing evidence, and this right to judicial review applied regardless of any individual patient's initial waiver of the right to judicial hearing; existing review procedures were woefully lacking and insufficient to satisfy patients' due process rights, and the patients' liberty interests coupled with the risk of erroneous commitment outweighed the increased administrative burdens connected with the judicial reviews. U.S. Const.Amend. 5. Streicher v. Prescott, 663 F. Supp. 335, 1987 U.S. Dist. LEXIS 4645 (1987), remanded by 1992 U.S. Dist. LEXIS 3300 (D.D.C. Mar. 20, 1992).

Due process did not require that insanity acquittees be afforded same protections conferred upon civil committees before they could be rehospitalized following conditional release to live in community. U.S. Const.Amend. 14; D.C. Code 1981, § 24-301(d). Brown v. United States, 682 A.2d 1131, 1996 D.C. App. LEXIS 192 (1996), writ of certiorari denied by 525 U.S. 988, 119 S. Ct. 458, 142 L. Ed. 2d 410, 1998 U.S. LEXIS 7215, 67 U.S.L.W. 3322 (1998).

Insanity acquittees' private interest to be free from confinement is more limited than interest of civil committees, in determining whether procedures provided insanity acquittees for release and conditional release violate due process. U.S. Const.Amend. 14. Brown v. United

States, 682 A.2d 1131, 1996 D.C. App. LEXIS 192 (1996), writ of certiorari denied by 525 U.S. 988, 119 S. Ct. 458, 142 L. Ed. 2d 410, 1998 U.S. LEXIS 7215, 67 U.S.L.W. 3322 (1998).

Involuntary rehospitalization of committed outpatient results in temporary loss of liberty; procedural due process serves to minimize risk of erroneous deprivation of that liberty. U.S. Const.Amend. 14. Brown v. United States, 682 A.2d 1131, 1996 D.C. App. LEXIS 192 (1996), writ of certiorari denied by 525 U.S. 988, 119 S. Ct. 458, 142 L. Ed. 2d 410, 1998 U.S. LEXIS 7215, 67 U.S.L.W. 3322 (1998).

To support involuntary rehospitalization of committed outpatient, at minimum, due process requires notice and opportunity to be heard at meaningful time and in meaningful manner. U.S. Const.Amend. 14. Brown v. United States, 682 A.2d 1131, 1996 D.C. App. LEXIS 192 (1996), writ of certiorari denied by 525 U.S. 988, 119 S. Ct. 458, 142 L. Ed. 2d 410, 1998 U.S. LEXIS 7215, 67 U.S.L.W. 3322 (1998).

Conditionally released insanity acquittee was not denied due process when he was rehospitalized; hospital informed court and counsel of acquittee's readmission, notice to court explained that basis for revocation was deterioration in acquittee's mental health, and trial court scheduled hearing on merits of acquittee's recommitment. U.S. Const.Amend. 14; D.C. Code 1981, § 24-301(k). Brown v. United States, 682 A.2d 1131, 1996 D.C. App. LEXIS 192 (1996), writ of certiorari denied by 525 U.S. 988, 119 S. Ct. 458, 142 L. Ed. 2d 410, 1998 U.S. LEXIS 7215, 67 U.S.L.W. 3322 (1998).

Hospital's procedures for rehospitalizing conditionally released insanity acquittees, together with statutory hearing rights for such acquittees, met due process requirements; procedures included preliminary determination by mental health professionals that circumstances involving patient's condition warranted at least temporary inpatient examination and care of patient, consistent with terms of conditional release order, and hospital provided notice to court and patient's counsel within five days of patient's return. U.S. Const.Amend. 14; D.C. Code 1981, § 24-301(k). Brown v. United States, 682 A.2d 1131, 1996 D.C. App. LEXIS 192 (1996), writ of certiorari denied by 525 U.S. 988, 119 S. Ct. 458, 142 L. Ed. 2d 410, 1998 U.S. LEXIS 7215, 67 U.S.L.W. 3322 (1998).

In commitment proceeding, admission of evidence of patient's conduct prior to previously unsuccessful commitment hearing did not violate patient's due process rights; patient's recent and continuing behavior provided clear reason for District to initiate new civil commitment proceedings, and statute provided effective means for identification and dismissal of petitions grounded on outdated and insubstantial evidence of current mental illness and dangerousness. D.C. Code 1981, §§ 21-523, 21-542, 21-544; U.S. Const.Amend. 14. In re Katz, 638 A.2d 684, 1994 D.C. App. LEXIS 36 (1994).

Once its civilly committed adult was released by hospital to live in community for indefinite period of time on convalescent leave, he became de facto outpatient, entitled to same due process rights as patient originally committed as outpatient. U.S. Const. Amend. 5; D.C. Code 1981, § 21-545(b). In re Plummer, 608 A.2d 741, 1992 D.C. App. LEXIS 130 (1992).

Under statute governing commitment proceedings and under original commitment order, patient originally committed to care and custody of hospital on outpatient basis had legitimate expectation that he might continue in outpatient status unless hospital was able to satisfy court that hospitalization was least restrictive appropriate alternative, which expectation was one of substance sufficient to entitle patient to due process safeguards. D.C. Code 1981, §§ 21-545(b), 21-546; U.S. Const.Amends. 5, 14. In re Mills, 467 A.2d 971, 1983 D.C. App. LEXIS 516 (1983).

Common characteristics, consisting of substantive standard of commitment and mandatory judicial hearings with notice and assistance of counsel, between statute providing for commitment to mental hospitals of persons acquitted of criminal charges by reason of insanity and statute providing for involuntary civil commitment to mental hospitals constitute essential due process rights associated with involuntary commitment. D.C. Code 1973, §§ 21-545(b), 24-301(d); U.S. Const. Amend. 5. Jones v. United States, 432 A.2d 364, 1981 D.C. App. LEXIS 306 (1981), affirmed by 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95, 51 U.S.L.W. 5041 (1983).

Because liberty is jeopardized by the civil commitment procedure, demands of due process must be satisfied. D.C. Code § 21-501 et seq. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

Inasmuch as deprivation of liberty under criminal law is penal, whereas involuntary civil confinement of mentally ill has a more benign, treatment goal in addition to objective of protecting public, guarantees of due process in the commitment field cannot be ascertained simply by a reference to the criminal law process; instead, courts must ask what is fundamentally fair under circumstances, taking into account the interests at stake and the corresponding rights of the respective parties. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

Private litigation of civil commitment, absent participation of a public prosecutor, did not adversely affect committee's legitimate liberty interest without an offsetting benefit to public, given fact that committee failed to demonstrate alleged evils of private litigation of failing to provide "screening" and "compromise" functions

inherent in prosecutorial discretion, of failing upon findings of mental illness and dangerousness, to utilize all available resources to provide least restrictive, appropriate treatment and of private petitioner's self-interest, possibly vindictive motivation. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

In an involuntary civil commitment trial, due process required proof beyond a reasonable doubt that respondent was mentally ill and, because of the illness, was likely to injure herself or other persons if allowed to remain at liberty. D.C. Code §§ 21-521, 21-541; U.S. Const. Amend. 5. In re Hodges, 325 A.2d 605, 1974 D.C. App. LEXIS 276 (1974).

Due process is satisfied where respondent is permitted to attend hearing and cross-examine accusers. In re Taylor, 112 WLR 1629 (Super. Ct.).

Construction and application.

Rule that persons found not guilty by reason of insanity must be given judicial hearing with procedures substantially similar to those in civil commitment proceedings is applicable prospectively only. D.C. Code §§ 21-545(b), 24-301(a, d). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Costs of medical treatment.

Superior Court had authority under the Ervin Act to order District of Columbia to pay for civil committee's care outside of District. D.C. Code 1981, §§ 21-501, 21-511 to 21-513, 21-545(b), 21-586. In re Myrick, 624 A.2d 1222, 1993 D.C. App. LEXIS 125 (1993).

District of Columbia has obligation to pay costs of medical treatment of one whom District has involuntarily civilly committed, whether or not individual is resident, until such time as another person or jurisdiction assumes responsibility for those costs. D.C. Code 1981, § 21-545. In re Myrick, 624 A.2d 1222, 1993 D.C. App. LEXIS 125 (1993).

Double jeopardy.

Double jeopardy bar does not apply to civil commitment. U.S. Const.Amend. 5. In re Katz, 638 A.2d 684, 1994 D.C. App. LEXIS 36 (1994).

Evidence and witnesses generally.

Though physician who was not board-certified but had several years of background, both practical and academic, in psychiatry could have qualified as an expert in psychiatry, and though, of all physicians who testified at proceeding to commit defendant as dangerous due to mental illness following acquittal by reason of insanity, such physician knew defendant best, refusal to allow such physician to testify as an expert in psychiatry was not reversible error where, inter alia, physician was allowed to express his opinion on defendant's probable future dangerousness and defense counsel was able to present the testimony of another physician, who did qualify as a psychiatric expert, that defendant was not suffering from mental illness. United States v. Ashe, 478 F.2d 661, 1973 U.S. App. LEXIS 10915 (C.A.D.C. 1973).

Primary function of doctors is treating sick, not testifying in court; and, therefore, to maximum extent possible, court will rely on written record, rather than personal testimony of treating physicians, in reviewing treatment plan for patient involuntarily committed because of mental illness. D.C. Code § 21-545. In re Jones, 338 F. Supp. 428, 1972 U.S. Dist. LEXIS 15061 (1972).

Psychiatrist's testimony that proposed committee's actions in disrobing in front of women could cause significant emotional injury to those vulnerable to sexual approaches was properly considered in determining whether proposed committee was likely to be dangerous to others. D.C. Code 1981, § 21-545(b). In re Samuels, 507 A.2d 150, 1986 D.C. App. LEXIS 307 (1986).

Respondent in civil commitment case is entitled to services of psychiatric expert upon a showing of financial inability to obtain the expert and the demonstration that the service is necessary to an adequate defense; deference must be given to judgment of counsel, but that does not prevent trial court from exercising its discretion. D.C. Code 1981, § 11-2605(a, c). In re Morrow, 463 A.2d 689, 1983 D.C. App. LEXIS 421 (1983).

In civil commitment case, trial court appropriately denies a request for services of psychiatric expert when respondent has received adequate psychiatric assistance from other sources. D.C. Code 1981, § 11-2605(a, c). In re Morrow, 463 A.2d 689, 1983 D.C. App. LEXIS 421 (1983).

In civil commitment case, permitting expert to testify as to his reexamination of respondent following the statutorily prescribed examination did not violate respondent's rights. D.C. Code 1981, § 21-501 et seq. In re Morrow, 463 A.2d 689, 1983 D.C. App. LEXIS 421 (1983).

Federal actions and proceedings.

Even if District of Columbia statute, providing that no person accused of an offense shall be acquitted on the ground that he was insane at the time of its commission unless his insanity, regardless of who raises the issue, is affirmatively established by preponderance of the evidence, may be constitutionally applied to a federal court prosecution of a federal offense, the statute did not require automatic commitment to all defendants acquitted by reason of insanity, regardless of who raised the issue of insanity. D.C. Code §§ 21-541 to 21-545, 24-301(d, j). United States v. Wright, 511 F.2d

1311, 1975 U.S. App. LEXIS 15941 (C.A.D.C. 1975).

Habeas corpus.

In reviewing on habeas corpus a civilly committed patient's confinement in a mental hospital, the court should satisfy itself that no less onerous disposition would serve purpose of commitment. D.C. Code §§ 21-501 to 21-591, 21-544, 21-545(b). Covington v. Harris, 419 F.2d 617, 1969 U.S. App. LEXIS 13253 (C.A.D.C. 1969).

Rule that habeas corpus petitioner must prove that his detention is illegal by preponderance of evidence applies in habeas corpus proceeding by one committed to mental hospital after being found not guilty of offense by reason of insanity, and thus court must find, by preponderance of evidence, that patient's commitment is no longer valid, that is, that he is no longer likely to injure himself or other persons due to illness. D.C. Code §§ 21-545(b), 24-301(a, d, e). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Where petitioner had not himself sought introduction of insanity defense at his trial and had not acquiesced in assertion of that defense, his commitment to hospital for the mentally ill following his acquittal by reason of insanity was not authorized and he was entitled to habeas corpus. D.C. Code §§ 21-501 to 21-591, 21-544, 21-545, 22-3204, 24-301(a, d). Rouse v. Cameron, 387 F.2d 241, 1967 U.S. App. LEXIS 5201 (C.A.D.C. 1967).

Evidence in committed petitioner's habeas corpus proceeding established that actual medical and psychiatric treatment extended to petitioner was fully warranted and that, in view of petitioner's tendency to wander, there was no facility within district, other than mental hospital with closed wards, presently capable of treating her. D.C. Code 1961, § 21-545(b). Lake v. Cameron, 267 F. Supp. 155, 1967 U.S. Dist. LEXIS 8312 (D.D.C1967).

Hospitalization of persons criminally incarcerated.

Transfer of prisoners to mental hospital requires protective procedures at least similar to those provided in 1964 Civil Commitment Act providing full system of procedural safeguards before finding of mental illness can be made. D.C. Code §§ 21-501 et seq., 21-543, 21-545 to 21-547, 24-106, 24-302, 24-303. Matthews v. Hardy, 420 F.2d 607, 1969 U.S. App. LEXIS 10958 (C.A.D.C. 1969), writ of certiorari denied by 397 U.S. 1010, 90 S. Ct. 1231, 25 L. Ed. 2d 423, 1970 U.S. LEXIS 2387 (1970).

Under statute providing that if director of department of corrections believes prisoner is mentally ill, he can refer prisoner to psychiatrist and, if psychiatrist concurs in that belief, director can then transfer prisoner to mental hospital, before prisoner can be involuntarily transferred he is entitled to judicial hearing, jury trial, and same rights of notice, counsel and cross-examination as are provided for in 1964 Civil Commitment Act and same procedures for release from hospital as are embodied in the Act. D.C. Code§§ 21-501 et seq., 21-543, 21-545 to 21-547, 24-106, 24-302, 24-303. Matthews v. Hardy, 420 F.2d 607, 1969 U.S. App. LEXIS 10958 (C.A.D.C. 1969), writ of certiorari denied by 397 U.S. 1010, 90 S. Ct. 1231, 25 L. Ed. 2d 423, 1970 U.S. LEXIS 2387 (1970).

That prisoner was back in prison at time case was heard did not relieve court of obligation to appraise validity of prison officials' continuing policy of commitments without hearing to mental institutions, inasmuch as prisoner was still subject to that policy. D.C. Code §§ 21-545, 21-546 et seq., 24-302. Matthews v. Hardy, 420 F.2d 607, 1969 U.S. App. LEXIS 10958 (C.A.D.C. 1969), writ of certiorari denied by 397 U.S. 1010, 90 S. Ct. 1231, 25 L. Ed. 2d 423, 1970 U.S. LEXIS 2387 (1970).

A person may be classified as mentally ill and held under civil commitment proceedings while subsequent criminal proceedings are brought against him. In re Nelson, 112 WLR 1869 (Super. Ct. 1984).

Institutionalization for term exceeding criminal penalty of criminal committee.

Insanity acquittee was not entitled to release merely because he had been hospitalized for period longer than he could have been incarcerated had he been convicted. D.C. Code 1981, §§ 21-545(b), 24-301(d)(1, 2), (e, j). Jones v. United States, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95 (U.S.Dist.Col. 1983).

There was no constitutional requirement that defendant, who had been found not guilty of petit larceny by reason of insanity and who, after a "release hearing," had been indefinitely committed to a mental hospital, be released or civilly committed at end of maximum imprisonment period, for that period bore no relationship to unchallenged basis for defendant's hospital confinement, that he was mentally ill, was dangerous to self or others, and should receive treatment until he was well enough for release. D.C. Code §§ 21-545(b), 24-301(d). Jones v. United States, 396 A.2d 183, 1978 D.C. App. LEXIS 585 (1978).

Instructions.

In proceedings for commitment as dangerous due to mental illness of a person who has been found not guilty of an offense by reason of insanity, instruction as to role of expert witnesses should be sent to the experts in advance of hearing and should be read at least once to the jury. D.C. Code § 21-541 et seq. United

States v. Ashe, 478 F.2d 661, 1973 U.S. App. LEXIS 10915 (C.A.D.C. 1973).

Jury hearing psychiatrist's testimony of dangerousness of person sought to be committed following acquittal on criminal charge due to finding of insanity should be informed of the various components of such term, to what extent it reflects a predicting of behavior, and whether it is prediction of an occurrence of a kind of behavior that, however deviant, might be considered by the jury not to be dangerous. United States v. Ashe, 478 F.2d 661, 1973 U.S. App. LEXIS 10915 (C.A.D.C. 1973).

In proceedings for commitment as dangerous due to mental illness of a person who has been found not guilty of an offense by reason of insanity, instruction as to role of expert witnesses should be sent to the experts in advance of hearing and should be read at least once to the jury. D.C. Code § 21-541 et seq. United States v. Ashe, 478 F.2d 661, 1973 U.S. App. LEXIS 10915 (C.A.D.C. 1973).

To extent that district court's instruction reflected government trial counsel's view that mental deficiency in and of itself constituted a mental illness within District of Columbia statute relating to civil commitment instruction was improper, but when court's charge was taken in its entirety the jury had been clearly and properly informed they could not commit person simply because of his mental deficiency. D.C. Code 1961, §§ 21-501, 21-545(b), 21-562. In re Alexander, 372 F.2d 925, 1967 U.S. App. LEXIS 7643 (C.A.D.C. 1967).

Trial court properly instructed jury on verdict consequences in civil commitment proceeding in light of the broader responsibility accorded the fact finder in such cases. In re Bumper, 441 A.2d 975, 1982 D.C. App. LEXIS 278 (1982).

In civil commitment proceeding, trial court's discussion in instruction of less restrictive treatment alternatives that would be available in event of a verdict of commitment without instructing jury regarding alternative treatment available for one who is not committed as well was error, but error did not constitute grounds for reversal where evidence introduced in commitment proceeding indicated that patient had received voluntary medical treatment in past, so that jury was, therefore, nevertheless informed that patient could seek and receive treatment even if he was not committed. In re Bumper, 441 A.2d 975, 1982 D.C. App. LEXIS 278 (1982).

Patient was not entitled to instruction in civil commitment proceeding that required jury, in order to commit him, to find patient posed actual danger to himself or others based on overt acts or to find that a high probability exists that patient would engage in conduct that would result in substantial harm to others if not committed. In re Bumper, 441 A.2d 975, 1982 D.C. App. LEXIS 278 (1982).

In involuntary civil commitment proceeding in which person was found to be mentally ill and likely to injure himself or others if allowed to remain at liberty, instructing jury that the likelihood of injury included injury to reputation, to chance of future employment, to ability to progress in the world "and the like" was reversible error, in that such instruction was of doubtful validity and invited speculation on matters not in evidence. D.C. Code 1973, § 21-545(b). In re Mendoza, 433 A.2d 1069, 1981 D.C. App. LEXIS 323 (1981).

Whether respondent in any commitment proceeding has recently committed an overt act which indicates future dangerousness is factor which may be argued to jury, but there is no requirement of instruction to that effect, and thus respondent was not entitled to instruction that jury could only find that respondent was likely to injure himself or others, as required to support his civil commitment as mentally ill person, if it found that he had committed recent overt act indicating future dangerousness. D.C. Code § 21-545(b). In re Snowden, 423 A.2d 188, 1980 D.C. App. LEXIS 397 (1980).

Jurisdiction.

Trial court retains continuing jurisdiction over insanity acquittee until he or she is released unconditionally. Brown v. United States, 682 A.2d 1131, 1996 D.C. App. LEXIS 192 (1996), writ of certiorari denied by 525 U.S. 988, 119 S. Ct. 458, 142 L. Ed. 2d 410, 1998 U.S. LEXIS 7215, 67 U.S.L.W. 3322 (1998).

Jury trial rights.

Criminal acquittee was not entitled, postcommitment, to jury determination that he was mentally ill and dangerous by clear and convincing evidence, though determination was required for initial civil commitment. D.C. Code 1981, §§ 21-544, 21-545. Reese v. United States, 614 A.2d 506, 1992 D.C. App. LEXIS 231 (1992).

Civil committee has right to jury trial on questions of mental illness and dangerousness, whereas criminal acquittee who has entered plea of not guilty by reason of insanity is committed without prior hearing and is entitled only to bench trial at which he, not the Government, bears the burden of proof. D.C. Code 1981, §§ 21-524 to 21-547, 24-301(d)(2), (k). Walls v. United States, 601 A.2d 54, 1991 D.C. App. LEXIS 335 (1991).

While jury trial right available to persons subject to involuntary civil commitment to mental hospitals is not similarly available to persons committed following acquittal of criminal charges by reason of insanity in acquitted person's release hearing, this difference is justified by fact that acquittee has had right to

jury determination of his sanity at time of offense, and thus difference between treatment did not violate equal protection. D.C. Code 1973,§§ 21-545(b), 24-301(d); U.S. Const. Amend. 5. Jones v. United States, 432 A.2d 364, 1981 D.C. App. LEXIS 306 (1981), affirmed by 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95, 51 U.S.L.W. 5041 (1983).

Availability of jury trial on mental illness and dangerousness under statute providing for involuntary civil commitment and absence of such right at release hearing for persons committed following acquittal of criminal charges by reason of insanity is insubstantial difference for purposes of equal protection because findings of mental illness and dangerousness are based on expert testimony and are not matters uniquely within province of jury of lay persons. D.C. Code 1973, §§ 21-545(b), 24-301(d); U.S. Const. Amend. 5. Jones v. United States, 432 A.2d 364, 1981 D.C. App. LEXIS 306 (1981), affirmed by 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95, 51 U.S.L.W. 5041 (1983).

Because person committed to mental hospital following acquittal of criminal charges by reason of insanity has right to jury determination of past insanity at criminal trial, because it is reasonable to presume continuation of mental illness in such person, and because jury right in commitment proceedings is not as meaningful as in ordinary criminal cases, absence of jury right at release hearing is not substantial difference for equal protection purposes vis-a-vis involuntary civil commitment proceedings. D.C. Code 1973, §§ 21-545(b), 24-301(d); U.S. Const. Amend. 5. Jones v. United States, 432 A.2d 364, 1981 D.C. App. LEXIS 306 (1981), affirmed by 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95, 51 U.S.L.W. 5041 (1983).

Least restrictive conditions of treatment and therapy.

Patient suffering from mental illness which was treated with care designed to maintain his health and see that his physical needs were satisfied was singularly deserving of judicial overview to guaranty that least restrictive alternatives were explored before his initial commitment proceedings were terminated. D.C. Code § 21-545. In re Jones, 338 F. Supp. 428, 1972 U.S. Dist. LEXIS 15061 (1972).

Trial court's ruling in proceeding seeking involuntary commitment of mentally ill individual, that least restrictive treatment alternative for individual was inpatient treatment, was not plainly wrong. In re Lanier, 905 A.2d 278, 2006 D.C. App. LEXIS 485 (2006).

Mental illness standards.

In order to warrant civil commitment, it is not essential that illness fit specifically into any of various classes of mental illnesses recognized by American Psychiatric Association. D.C. Code §§ 21-501, 21-545(b). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

The term "injure," for purposes of ordering involuntary hospitalization because subject is likely to injure herself or others as a result of mental illness, connotes an element of danger, but danger need not necessarily be physical nor involve violence; all that is required is that subject be found likely, by reason of mental illness, to inadvertently place himself in a position of danger or suffer harm. D.C. Code 1981, § 21-545(b). In re Gahan, 531 A.2d 661, 1987 D.C. App. LEXIS 445 (1987).

For purposes of civil commitment, aberrant behavior need not involve actual violence so long as the jury may reasonably find that it is likely to be dangerous to others. D.C. Code 1981, § 21-545(b). In re Samuels, 507 A.2d 150, 1986 D.C. App. LEXIS 307 (1986).

Essential issue on a civil commitment trial is whether respondent is presently dangerous to herself or others. D.C. Code 1981, § 21-501 et seq. In re Morrow, 463 A.2d 689, 1983 D.C. App. LEXIS 421 (1983).

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Word "injure," within statute providing that person may be hospitalized for indeterminate period if it is found that, because of his mental illness, he is likely to injure himself or other persons if allowed to remain at liberty, implies an element of dangerousness. D.C. Code 1973, § 21-545(b). In re Mendoza, 433 A.2d 1069, 1981 D.C. App. LEXIS 323 (1981).

Involuntary civil commitment is appropriate when a fact finder determines, by clear and convincing evidence, that the subject is likely to cause injury to himself or others by criminal conduct or otherwise. D.C. Code 1973, § 21-545(b). In re Méndoza, 433 A.2d 1069, 1981 D.C. App. LEXIS 323 (1981).

Notice rights.

Effect of ruling that where patient was not given required statutory notice of court hearing leading to adjudication that he was of unsound mind and he did not learn of decree until he returned to jurisdiction, about a year after date of decree, he was entitled to have decree set aside was prospective only. D.C. Code 1951, §§ 21-301 to 21-333, 21-311. Lafferty v. District of Columbia, 277 F.2d 348, 1960 U.S. App. LEXIS 5113 (C.A.D.C. 1960).

Superior court mental health rule which provides for notification of right to appeal from adverse order in civil commitment proceeding, mandating such notification only to respondent

patient, did not give petitioner in involuntary commitment proceeding right of appeal after jury verdict was rendered in favor of patient. D.C. Code §§ 11-721, 21-501 et seq., 21-545(b). In re Lomax, 386 A.2d 1185, 1978 D.C. App. LEXIS 377 (1978).

Order and judgments.

Provision of the District of Columbia Hospitalization of the Mentally Ill Act providing that court may order hospitalization or any other alternative course of treatment makes court's duty to investigate discretionary and not mandatory. D.C. Code 1961, § 21-545(b). Lake v. Cameron, 267 F. Supp. 155, 1967 U.S. Dist. LEXIS 8312 (D.D.C1967).

Court order for involuntary hospitalization must rest upon a finding, based upon clear and convincing evidence, that the subject, if allowed to remain at liberty, is likely to injure herself or others as a result of mental illness. D.C. Code 1981, § 21-545(b). In re Gahan, 531 A.2d 661, 1987 D.C. App. LEXIS 445 (1987).

Records of each patient afforded ample factual predicates for including in their commitment orders provisions authorizing their summary return to hospital for a brief period of reevaluation and treatment in the event that their condition deteriorated or if they failed to comply with terms of their outpatient treatment programs. D.C. Code 1981, § 21-545(b). In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Summary return provision need not be incorporated into every final order committing individual to outpatient treatment; rather, hospital should be granted the authority only where, in light of the patient's mental condition and medical history, such a provision appears warranted. D.C. Code 1981, § 21-545(b). In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Outpatients generally.

Individual on rolls of Commission on Mental Health Services as a voluntary outpatient who meets statutory criteria for civil commitment may be involuntarily committed as an outpatient, when Commission on Mental Health Services or Superior Court's Commission on Mental Health proposes nothing more than conversion of individual's outpatient status from voluntary to involuntary. D.C. Code 1981, § 21-541. In re Johnson, 691 A.2d 628, 1997 D.C. App. LEXIS 34 (1997).

Court that conditioned release of insanity acquittee upon acquittee's continued outpatient treatment was obligated upon learning of acquittee's incarceration after felony conviction to take steps to assure his return to jurisdiction and to hospital for evaluation of his treatment needs. D.C. Code 1981, § 24-301(i). Brown v. United States, 682 A.2d 1131, 1996 D.C. App. LEXIS 192 (1996), writ of certiorari denied by 525 U.S. 988, 119 S. Ct. 458, 142 L. Ed. 2d 410, 1998 U.S. LEXIS 7215, 67 U.S.L.W. 3322 (1998).

Revocation of outpatient commitment based solely upon patient's failure to comply with prescribed course of outpatient treatment, without reliable evidence in record that patient is likely to be dangerous as a result of mental illness, would violate Ervin Act. (Per Mack, J., with one Judge concurring.) D.C. Code 1981, §§ 21-545(b), 21-547. In re Stokes, 546 A.2d 356, 1988 D.C. App. LEXIS 100 (1988).

Presumptions and burden of proof.

Where burden of proof on issue of defendant's mental condition was placed on defendant at release hearing and defendant's request for jury trial was denied, defendant's commitment to mental institution following his acquittal by reason of insanity was not valid under the civil commitment statute of the District of Columbia. D.C. Code §§ 21-541 to 21-545, 24-301, 24-301(d), (d)(1), (j). United States v. Wright, 511 F.2d 1311, 1975 U.S. App. LEXIS 15941 (C.A.D.C. 1975).

Proof of mental illness and dangerousness in involuntary civil commitment proceedings must be beyond a reasonable doubt rather than by preponderance of evidence. D.C. Code §§ 21-521, 21-523, 21-524, 21-528, 21-545, 21-545(b); U.S. Const. Amends. 5, 14. In re Ballay, 482 F.2d 648, 1973 U.S. App. LEXIS 9680 (C.A.D.C. 1973).

There is justification for preponderance of proof standard for commitment of the insanity-acquitted even if higher standard is required prior to civil commitment for propensity and even though there is no justification for denying the insanity-acquitted the right to jury trial that is recognized for those involved in civil commitment proceedings. D.C. Code §§ 11-101 et seq., 21-541(a), 21-545, 24-301(d, e). United States v. Brown, 478 F.2d 606, 1973 U.S. App. LEXIS 12287 (C.A.D.C. 1973).

To sustain a civil commitment under District of Columbia Code it is insufficient to find that a person is mentally deficient even when such condition is accompanied by some antisocial behavior, and government must prove by preponderance of evidence that individual suffers from mental illness, whether related or unrelated to mental deficiency, and that danger-productive behavior of individual results from mental illness. D.C. Code 1961, §§ 21-501, 21-545(b). In re Alexander, 372 F.2d 925, 1967 U.S. App. LEXIS 7643 (C.A.D.C. 1967).

Burden of proof was not impermissibly shifted to inmate in commitment process to prove she was not mentally ill and dangerous, in violation of her due process rights; Commission on Mental Health had already determined that inmate was mentally ill, and hearing was

only to determine least restrictive treatment alternative. D.C. Code 1981, §§ 21-541, 21-544, 21-545(a); U.S. Const.Amends. 5, 14; Mental Health Rules 4-6. In re Gaither, 626 A.2d 920, 1993 D.C. App. LEXIS 153 (1993).

Earlier jury determination of individual's mental state at some past time is not proof of his or her current condition. D.C. Code 1981, § 21-545(b). In re Samuels, 507 A.2d 150, 1986 D.C. App. LEXIS 307 (1986).

Difference between requiring persons committed to mental hospitals following acquittal of criminal charges by reason of insanity to rebut presumption of continuing insanity and requiring District of Columbia to prove mental illness and dangerousness of persons subject to involuntary civil commitment by clear and convincing evidence is justified by fact that defendant raising insanity defense should not have to meet higher burden on such a relatively difficult issue; however, when District seeks to commit person who is disputing fact of insanity or dangerousness, it is reasonable that risk of error be more heavily thrust upon Government. D.C. Code 1973, §§ 21-545(b), 24-301(d); U.S. Const. Amend. 5. Jones v. United States, 432 A.2d 364, 1981 D.C. App. LEXIS 306 (1981), affirmed by 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95, 51 U.S.L.W. 5041 (1983).

Fact that superior court mental health rule placed burden of proof on government did not, by negative implication, preclude private participation to facilitate the governmental determination by jury and trial court; likewise, rule limiting access to Mental Health Commission transcripts did not address issue of proper parties to an involuntary civil commitment proceeding, and, in any event, family members, the most likely private petitioners, were granted access to such transcripts, and trial court was empowered to extend access to others. D.C. Code SCR, Mental Health Rules 5(a), 11(c). In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

Person confined by reason of having been acquitted on ground of insanity has burden of proving that he is not mentally ill and not likely to injure himself or others due to mental illness. D.C. Code § 21-545(b). United States v. Shorter, 343 A.2d 569, 1975 D.C. App. LEXIS 237 (1975).

In absence of evidence that husband was of sound mind or had requisite mental capacity to execute any documents, ratify acts of another or authorize the signing of his name at time wife completed form requesting veterans administration to pay her a portion of husband's disability benefits, previous adjudication of incompetence was presumed to be of continuing validity and trial court's findings that all representations made by wife to veterans administration were at husband's request and were ratified by him, and that he authorized wife to sign his name on benefit form were erroneous. D.C. Code§§ 21-311 to 21-315; 38 U.S.C. §§ 3001(a), 3002, 3107(a). Martin v. Martin, 270 A.2d 141, 1970 D.C. App. LEXIS 349 (App. 1970).

Procedural irregularities in commission proceedings.

Even if there is defined standard of proof requirement in proceedings of Commission on Mental Health, person alleged to be mentally ill was not prejudiced by Commission's failure to comply with stand of proof where there was full trial in which jury, independent of Commission, found that individual was mentally ill and was danger to herself. U.S. Const. Amends. 5, 14. In re Holmes, 422 A.2d 969, 1980 D.C. App. LEXIS 384 (1980).

Since purpose of proceedings before Commission on Mental Health is not to adjudicate issue of commitment in final manner, but, rather, it is to enable Commission, panel of neutral experts, to perform its preliminary screening function and to report responsibly its findings and recommendation to court, person alleged to be mentally ill was not denied due process when Commission made its findings of fact without applying any set standard of proof to evidence presented. U.S. Const. Amends. 5, 14. In re Holmes, 422 A.2d 969, 1980 D.C. App. LEXIS 384 (1980).

Man, who had been charged with crime, committed to mental hospital due to incompetency to stand trial and found unlikely to regain his competency in the reasonable foreseeable future, was not denied equal protection by Government's delaying commencing civil commitment proceedings for 42 days after the finding was made, where subsequent periods of confinement were relatively brief, civil commitment was accomplished within three months of finding and court was acquainted with medical report conclusion that man would be dangerous to himself or others if released. D.C. Code §§ 21-521, 21-523 to 21-525, 21-541, 21-541(a), 21-542 to 21-545, 22-501, 22-507, 22-2307, 24-301(a); U.S. Const. Amend. 14. Thomas v. United States, 418 A.2d 122, 1980 D.C. App. LEXIS 333 (1980).

Independent judicial determination of need for further involuntary hospitalization remedied legal imperfection of original detention, arising from fact that application leading to emergency commitment was signed by physician not empowered by statute to initiate emergency commitment procedure. D.C. Code §§ 21-521 to 21-528. Williams v. Meredith, 407 A.2d 569, 1979 D.C. App. LEXIS 477 (1979).

Purposes.

The 1964 revision of the District of Columbia's civil commitment laws had primary pur-

pose to safeguard constitutional rights of the mentally ill, i.e., to assure fair commitment and release procedures and adequate treatment during confinement. D.C. Code § 21-501 et seq. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

The two legal foundations for the governmental exercise of authority to confine the mentally ill are the police power and parens patriae power. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

Purpose of civil commitment proceeding is not to decide whether a person has engaged in legislatively condemned conduct, but to determine whether he is mentally ill and likely to be a danger to himself or others. D.C. Code §§ 21-501 et seq., 21-521, 21-545(b). In re Lomax, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

Questions of law and fact.

In so far as a psychiatrist's conclusion that person who has been found not guilty on criminal charge is dangerous due to mental illness reflects his value preferences in matters involving community values, the ultimate decision must be made by the court and the jury, which is also the case with respect to "mental illness" as a legal concept. United States v. Ashe, 478 F.2d 661, 1973 U.S. App. LEXIS 10915 (C.A.D.C. 1973).

Civil commitment proceeding spotlights mental condition of proposed patient at time of hearing; at the proceeding, fact finder's role is to determine whether clear and convincing evidence shows that person before it is currently mentally ill and likely to injure herself or others if allowed to remain at liberty. D.C. Code 1981, § 21-545(b). In re Artis, 615 A.2d 1148, 1992 D.C. App. LEXIS 273 (1992).

Jury in civil commitment proceeding must determine whether clear and convincing evidence shows the person to be currently mentally ill and likely to be dangerous to self or others because of that illness if allowed to remain at liberty. D.C. Code 1981, § 21-545(b). In re Samuels, 507 A.2d 150, 1986 D.C. App. LEXIS 307 (1986).

In civil commitment proceeding, jury may properly examine only the nature of a person's alleged mental illness and his past conduct in assessing likelihood of his causing future injury. D.C. Code 1973, § 21-545(b). In re Mendoza, 433 A.2d 1069, 1981 D.C. App. LEXIS 323 (1981).

Refusal of treatment or therapy.

Proceeding seeking involuntary commitment of mentally ill individual was not void ab initio because individual was voluntary patient at time of trial; record showed that individual was no longer amenable to voluntary treatment, as individual disobeyed doctor's orders while being voluntarily treated, refused to take her prescribed medicines, and declined to participate in programs to help her assimilate into society. In re Lanier, 905 A.2d 278, 2006 D.C. App. LEXIS 485 (2006).

Status of inpatient at mental hospital could be changed from voluntary to involuntary; patient was subjected to arrest warrant for sexually assaulting hospital employee, found to be mentally ill, incompetent to stand trial and danger to himself and others, and continued to resist treatment by proclaiming that he was not mentally ill, even as he began requiring supervision to ensure that he took his medication and did not engage in violent, unprovoked sexual behavior. D.C. Code 1981, § 21-541. In re Clark, 700 A.2d 781, 1997 D.C. App. LEXIS 230 (1997).

Where it appeared that trial court in determining whether, in a nonemergency situation, to authorize hospital to administer psychotropic drugs to patient adjudicated mentally ill and incompetent did not give sufficient consideration to patient's religious views as Christian Scientist, case was remanded to permit trial court to determine, to extent possible, course of action patient herself would choose if she were capable of making competent decision. U.S. Const. Amend. 1. In re Boyd, 403 A.2d 744, 1979 D.C. App. LEXIS 404 (1979).

Psychiatrist's unverified letter to trial court stating that there had been considerable improvement in patient's mental condition and that she gave no religious objection to taking her medication and accepted it voluntarily failed to provide sufficient basis to satisfy hospital's burden of proving that patient's suit contesting forced administration of psychotropic drugs was moot. In re Boyd, 403 A.2d 744, 1979 D.C. App. LEXIS 404 (1979).

If trial court in determining under "substituted judgment" concept whether incompetent patient would, if competent, reject psychotropic medication on religious grounds, as she had prior to her incompetency finds that she would reject treatment, it must refuse to authorize such treatment unless the government can demonstrate that a particular compelling state interest would justify overriding patient's putative choice. U.S. Const. Amend. 1. In re Boyd, 403 A.2d 744, 1979 D.C. App. LEXIS 404 (1979).

Even if a state interest is sufficiently compelling to justify overriding incompetent patient's choice that she not receive certain medical treatment, trial court must order only the least intrusive form of treatment for the state's interest must necessarily decrease as degree of bodily invasion increases. U.S. Const. Amend. 1. In re Boyd, 403 A.2d 744, 1979 D.C. App. LEXIS 404 (1979).

When a legally incompetent patient asserts a First Amendment right not to receive psychotropic drugs, and such drugs are not needed to

save patient's life, trial court in determining whether to authorize such medication must use "substituted" judgment approach and determine as best it can what choice the individual, if competent, would make with respect to such treatment. U.S. Const. Amend. 1. In re Boyd, 403 A.2d 744, 1979 D.C. App. LEXIS 404 (1979).

Rehospitalization.

After insanity acquittee was granted conditional release, hospital's decision to return him to hospital temporarily for treatment pursuant to its authority under court order was not equivalent to revocation of conditional release. D.C. Code 1981, § 24-301(e, k). Brown v. United States, 682 A.2d 1131, 1996 D.C. App. LEXIS 192 (1996), writ of certiorari denied by 525 U.S. 988, 119 S. Ct. 458, 142 L. Ed. 2d 410, 1998 U.S. LEXIS 7215, 67 U.S.L.W. 3322 (1998).

Demonstrated dangerousness manifested by insanity acquittee's criminal conduct forms rational basis for utilizing different procedures for recommitting insanity acquittees who have been conditionally released than for patients whose illnesses have not resulted in criminal activity. U.S. Const.Amend. 14; D.C. Code 1981, § 24-301(k). Brown v. United States, 682 A.2d 1131, 1996 D.C. App. LEXIS 192 (1996), writ of certiorari denied by 525 U.S. 988, 119 S. Ct. 458, 142 L. Ed. 2d 410, 1998 U.S. LEXIS 7215, 67 U.S.L.W. 3322 (1998).

Trial court was not required to await motion by government before taking steps to assure insanity acquittee's return to hospital for assessment upon learning that acquittee was convicted of felony in another jurisdiction. D.C. Code 1981, § 24-301(i). Brown v. United States, 682 A.2d 1131, 1996 D.C. App. LEXIS 192 (1996), writ of certiorari denied by 525 U.S. 988, 119 S. Ct. 458, 142 L. Ed. 2d 410, 1998 U.S. LEXIS 7215, 67 U.S.L.W. 3322 (1998).

Trial court's decision to revoke an outpatient commitment under District of Columbia Hospitalization of Mentally Ill Act, D.C. Code 1981, § 21-545(b) must contain explicit finding that inpatient treatment is the least restrictive alternative before revoking a patient's outpatient commitment. In re James, 507 A.2d 155, 1986 D.C. App. LEXIS 309 (1986).

When committing individuals to a course of outpatient therapy that exposes them to pressures of life in the community, trial court may reasonably anticipate that patient's condition may deteriorate or that he will not comply with terms of his release; in such a case, it is fully consistent with interests of the individual and public for court to authorize return of individual for brief period of inpatient observation when reevaluation or treatment appears clinically warranted. D.C. Code 1981, § 21-545(b). In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Not every instance of an outpatient's failure to take prescribed medication or attend therapy sessions justifies the conclusion that he is not cooperating with the treatment program, and thus hospital must be accorded flexibility in determining when involuntarily committed patient is in need of brief institutional reevaluation or treatment. D.C. Code 1981, § 21-545(b). In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Nothing in District of Columbia Hospitalization of the Mentally Ill Act requires additional court involvement in form of an adversary hearing prior to temporary inpatient reevaluations of involuntarily committed patients who fail to comply with their outpatient treatment programs. D.C. Code 1981, § 21-545(b). In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Superintendent of hospital must provide trial court with affidavit within 24 hours of involuntarily committed patient's return to hospital for reevaluation; affiant must recite recent actions of patient and reasons for his return in sufficient detail to enable trial court to make a prompt, ex parte determination that the patient has failed to abide by his outpatient treatment regimen or has suffered a deterioration in his condition justifying the hospital's action. D.C. Code 1981, § 21-545(b). In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

District of Columbia Hospitalization of the Mentally Ill Act does not compel use of contrasting procedures for emergency and nonemergency reevaluation of patients involuntarily committed to outpatient therapy. D.C. Code 1981, § 21-545(b). In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Requirement of an adversary hearing prior to inpatient reevaluation of an involuntarily committed patient undergoing outpatient therapy in nonemergency cases is inappropriate. D.C. Code 1981, § 21-545(b). In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Right to representation by counsel.

Where current statute was plain and unambiguous on question of governmental representation of private petitioners, there was no basis to presume congressional intent to permit court appointment of corporation counsel, though previous repealed statute had provided that corporation counsel or one of his assistants should represent petitioner in any proceeding in which a commitment of allegedly mentally ill person at public expense was sought. D.C. Code §§ 1-301, 21-544, 21-545. District of Columbia v. Pryor, 366 A.2d 141, 1976 D.C. App. LEXIS 417 (1976).

To accept or create additional obligation to obey court order for corporation counsel to undertake representation of private citizens in mental health cases would be antithetical to statute setting forth duties of corporation counsel and would also be contrary to separation of powers doctrine, and thus not only was corporation counsel not required by statute to represent private petitioners, seeking involuntary civil commitment of adult son or daughter, but superior court judge had no power to make such an appointment. D.C. Code §§ 1-301, 11-101, 21-544, 21-545. District of Columbia v. Pryor, 366 A.2d 141, 1976 D.C. App. LEXIS 417 (1976).

Scope of judicial inquiry.

Absent jury demand, trial court at hearing after Commission on Mental Health found patient was mentally ill and likely to injure others if allowed to remain at liberty and recommended hospitalization had authority to evaluate Commission hearing and to reject Commission report and on remand court should consider merits of patient's contentions and take additional evidence if necessary. D.C. Code §§ 21-513, 21-541 et seq., 21-544, 21-545(a, b). In re Walls, 442 F.2d 749, 1971 U.S. App. LEXIS 12494 (C.A.D.C. 1971).

Court's review of hospital's treatment plan for patient involuntarily committed because of mental illness is of very limited nature, and court may not decide whether hospital has made best possible decision as to course of treatment but only whether it has made permissible decision based on relevant information and within broad range of discretion given to hospital administrator. D.C. Code§ 21-545. In re Jones, 338 F. Supp. 428, 1972 U.S. Dist. LEXIS 15061 (1972).

Court would have authority to explore alternative courses and facilities for treatment of patient involuntarily committed because of mental illness, both outside and within the hospital complex. D.C. Code § 21-545. In re Jones, 338 F. Supp. 428, 1972 U.S. Dist. LEXIS 15061 (1972).

In commitment hearing, res judicata did not apply to bar introduction of evidence of patient's conduct prior to previously unsuccessful commitment hearing; issue in second commitment suit was patient's present mental condition, and thus was not the same issue decided in the prior commitment hearing. In re Katz, 638 A.2d 684, 1994 D.C. App. LEXIS 36 (1994).

Court in commitment proceeding is not limited to polarized choice between indefinite hospitalization and unconditional release, since entire spectrum of services is available, including outpatient treatment, foster care, halfway houses, day hospitals, nursing homes, and others, and court has duty to explore alternatives both within mental hospital and outside hospital, and is required to select least restrictive alternative which would serve purposes of commitment. D.C. Code 1981, §§ 21-545(b), 21-546. In re Mills, 467 A.2d 971, 1983 D.C. App. LEXIS 516 (1983).

Standards applicable to criminal and civil committees.

Where there is evidence that the Government's focus was not on convicting a mentally ill defendant but, rather, on committing him in the wake of an insanity acquittal, statute's summary commitment procedures will not be available unless counsel and the court can meet the burden of ensuring that defendant personally, as distinguished from his attorney, fully understands the proceedings against him and actually raises the insanity defense. D.C. Code § 301. United States v. Henry, 600 F.2d 924, 1979 U.S. App. LEXIS 15437 (C.A.D.C. 1979).

Persons found not guilty by reason of insanity must be given judicial hearing with procedures substantially similar to those in civil commitment proceedings. D.C. Code §§ 21-545(b), 24-301(a, d). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Where feasible, requirements of Hospitalization of Mentally Ill Act as to notice, counsel, and jury trial should be followed in connection with judicial hearing afforded persons found not guilty by reason of insanity. D.C. Code§§ 21-545(b), 24-301(a, d). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Fact that persons acquitted by reason of insanity have committed criminal acts and that such fact may tend to show they meet requirements for commitment does not remove such requirements nor justify total abandonment of procedures used in civil commitment proceedings to determine whether such requirements have been satisfied. D.C. Code §§ 21-545(b), 24-301(a, d). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Standard for release is the same regardless of whether person is civilly committed or committed following imposition of insanity defense by the trial court, or committed after pleading not guilty by reason of insanity. Walls v. United States, 601 A.2d 54, 1991 D.C. App. LEXIS 335 (1991).

Time requirements.

After court finds in Jackson hearing that defendant is unlikely to become competent in foreseeable future, government must institute civil commitment proceeding, if one is desired, within 30 days, and, while the rule is not inviolable, extension should normally be granted only for extraordinary cause shown. D.C. Code §§ 21-521, 21-523 to 21-525, 21-541, 21-541(a), 21-542 to 21-545, 22-501, 22-507,

22-2307, 24-301(a); U.S. Const. Amend. 14. Thomas v. United States, 418 A.2d 122, 1980 D.C. App. LEXIS 333 (1980).

Treatment and therapy options.

Habeas corpus proceeding by petitioner, who was found to be somewhat senile, had poor memory, had wandered away on few occasions, and was unable to care for herself at all times, and who had been confined in Saint Elizabeth's Hospital in District of Columbia as insane person, would be remanded to District Court for inquiry into other alternative courses of treatment. D.C. Code 1961, §§ 21-501 to 21-591, 21-545(b). Lake v. Cameron, 364 F.2d 657, 1966 U.S. App. LEXIS 6103 (C.A.D.C. 1966), writ of certiorari denied by 382 U.S. 863, 86 S. Ct. 126, 15 L. Ed. 2d 100, 1965 U.S. LEXIS 875 (1965).

In fashioning a program of therapy best suited to needs of an involuntarily committed patient, trial court must consider interests of both patient and public; inherent in this determination is requirement that trial court satisfy itself that no less restrictive therapeutic regimen would serve purposes of commitment. D.C. Code 1981, § 21-545(b). In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Even after a civil commitment proceeding, a trial court cannot override treatment decision of a mentally ill adult unless he or she has been adjudicated presently incompetent. In re Boyd, 403 A.2d 744, 1979 D.C. App. LEXIS 404 (1979).

Every competent adult has right to determine what shall be done with his own body, but once an individual becomes incompetent, state must act as parens patriae; as such, state has duty and right to care for "best interest" of incompetent, even if that occasionally means overriding a decision made by individual while incompetent. In re Boyd, 403 A.2d 744, 1979 D.C. App. LEXIS 404 (1979).

Validity of related statutes.

Dangerousness demonstrated by the commission of a crime and subsequent acquittal by reason of insanity constitute rational basis for disparity in statutory provisions which require court approval for release of mental patient who has been acquitted of criminal charges by reason of insanity but which do not provide for any court review of release of a civil committee. D.C. Code§§ 21-541 to 21-545, 24-301(e). United States v. Ecker, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

Statutory standard for involuntary commitment, requiring, inter alia, that one be likely "to injure himself or other persons," was sufficiently definite to survive constitutional challenge of vagueness. D.C. Code §§ 21-501 et seq., 21-521, 21-527, 21-544, 21-545. In re Alexander, 336 F. Supp. 1305, 1972 U.S. Dist. LEXIS 15503 (1972).

Principle that penal character of statute depends on its underlying nature and whether it is reasonably supported by legitimate state interest applies equally to analysis of statutes providing for commitment of persons to mental hospitals. D.C. Code 1973, §§ 21-545(b), 24-301(d). Jones v. United States, 432 A.2d 364, 1981 D.C. App. LEXIS 306 (1981), affirmed by 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95, 51 U.S.L.W. 5041 (1983).

Private litigation of civil commitments does not violate constitutional separation of powers, given fact that, because civil commitment scheme permits, but does not require, the participation by a corporation counsel, there is no infringement upon an exclusive, executive prerogative. In re Kossow, 393 A.2d 97, 1978 D.C. App. LEXIS 338 (1978).

Verdict.

Defendant who was insane for purpose of responsibility at time of offense may not be insane for purpose of civil commitment at time of verdict, or, although competent to stand trial, he may be insane, dangerous and in need of treatment for purpose of civil commitment. D.C. Code §§ 21-501 to 21-591, 21-545(b). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Government's recourse for verdict of no-commitment allegedly tainted by error is to initiate new proceeding. In re Katz, 638 A.2d 684, 1994 D.C. App. LEXIS 36 (1994).

Voir dire.

Voir dire examination of prospective jurors in proceeding to commit the defendant as dangerous due to mental illness, following finding of not guilty by reason of insanity in prosecution for carnal knowledge of his ten-year-old daughter, was sufficient to discover possible prejudice, and thus defendant could not claim reversible error in denial of argumentative questions requested by him. United States v. Ashe, 478 F.2d 661, 1973 U.S. App. LEXIS 10915 (C.A.D.C. 1973).

Even assuming that it was error for government counsel in civil commitment proceeding to mention on voir dire that jury was to decide whether appellant should have further treatment or whether she must be immediately released, error was harmless, in light of judge's closing instructions correctly advising the jury of their statutory duty to focus on determining mental illness and dangerousness, and fact that remark was not repeated. D.C. Code 1981, § 21-545(b). In re Artis, 615 A.2d 1148, 1992 D.C. App. LEXIS 273 (1992).

Waiver of right to trial.

Waiver of trial following institution of civil commitment proceedings constituted an admis-

sion by patients that they were mentally ill and dangerous to themselves or others, permitting trial court to order any disposition appropriate under District of Columbia Hospitalization of the Mentally Ill Act. D.C. Code 1981, §§ 21-541(a), 21-545(b). In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Weight and sufficiency of evidence.

Finding of insanity at criminal trial was sufficiently probative of mental illness and dangerousness to justify commitment of accused acquitted on ground of insanity, in that it was not unreasonable for Congress to determine that person who has been found, beyond reasonable doubt, to have committed criminal act indicates dangerousness, and insanity acquittal supported inference of continuing mental illness. D.C. Code 1981, §§ 21-545(b), 24-301(d)(1, 2), (e, j). Jones v. United States, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95 (U.S.Dist.Col. 1983).

Evidence supported finding that patient, who was committed under Hospitalization of Mentally Ill Act, was likely to injure himself or others. D.C. Code § 21-545(b). In re Penn, 443 F.2d 663, 1970 U.S. App. LEXIS 5978 (C.A.D.C. 1970).

In view of psychiatrists' testimony that person was suffering from condition which substantially impaired his health, that the condition was interrelated with his mental deficiency, and that his antisocial behavior occurred as result and manifestation of underlying mental illness, there was sufficient evidence for jury to find that person in addition to being mentally deficient was suffering from a mental illness. D.C. Code 1961, §§ 21-501, 21-545(b), 21-562. In re Alexander, 372 F.2d 925, 1967 U.S. App. LEXIS 7643 (C.A.D.C. 1967).

Evidence in civil commitment proceeding was sufficient to support conclusion that appellant was mentally ill and likely to injure herself if allowed to remain at liberty; testimony of government expert witnesses consistently echoed appellant's unrefuted history of mental illness, her inability or refusal to maintain a needed regime of daily medication, an alarming disregard for personal hygiene, and an apparent incapacity to appreciate potentially fatal implications of her conditions. D.C. Code 1981, § 21-545(b). In re Artis, 615 A.2d 1148, 1992 D.C. App. LEXIS 273 (1992).

Evidence supported trial judge's finding that likelihood that subject was likely to injure herself was sufficient to justify involuntary hospitalization; testimony showed that subject was unable to care for herself, to a degree which put her in potential physical danger, and there was evidence justifying conclusion that her aggressive and hostile conduct was likely, at some point, to incur retaliation. D.C. Code 1981, § 21-545(b). In re Gahan, 531 A.2d 661, 1987 D.C. App. LEXIS 445 (1987).

Testimony by officer that he had found proposed committee wandering aimlessly and speaking incoherently in the midst of moving automobile traffic was an indication that proposed committee's behavior endangered both his own well being and the safety of others, as did testimony by proposed committee's mother that her son on various past occasions had shattered a glass window, put a whole in a wall, smashed a guitar, and threatened family members. D.C. Code 1981, § 21-545(b). In re Samuels, 507 A.2d 150, 1986 D.C. App. LEXIS 307 (1986).

In civil commitment proceedings, evidence was sufficient to support finding that paranoid schizophrenic who believed he was the president was likely to endanger himself and/or others. D.C. Code § 21-545(b). In re Nelson, 408 A.2d 1233, 1979 D.C. App. LEXIS 507 (1979).

§ 21-545.01. Renewal of commitment status by Commission; review by court.

(a) At least 60 days prior to the expiration of an order of commitment issued pursuant to section 21-545 or this section, the chief clinical officer of the Department, or the chief of service of the facility, hospital, or mental health provider to which the person is committed may petition the Commission for a renewal of the order of commitment for that person. For good cause shown, a petition of commitment may be filed within the last 60 days of the one-year period of commitment. The petition for renewal of commitment shall be supported by a certificate of a psychiatrist or qualified psychologist stating that he has examined the person and is of the opinion that the person is mentally ill, and, because of the illness, is likely to injure himself or other persons if not committed. The term of the renewed commitment order shall not exceed one year.

(b) Within 3 days of the filing of a petition under subsection (a) of this section, the Commission shall send a copy of the petition and supporting certificate by registered mail to the person with respect to whom the petition was filed and by regular mail to the person's attorney.

(c) The Commission shall promptly examine a person for whom a petition is filed under subsection (a) of this section, and, in accordance with the procedures described in sections 21-542 and 21-543, shall thereafter promptly hold a hearing on the issue of the person's mental illness and whether, as a result of a mental illness, the person is likely to injure himself or other persons if not committed.

(d) If the Commission finds, after a hearing under subsection (c) of this section, that the person with respect to whom the hearing was held is no longer mentally ill, or is not mentally ill to the extent that the person is likely to injure himself or other persons if not committed, the Commission shall immediately order the termination of the commitment and notify the Court of that fact in writing.

(e) If the Commission finds, after a hearing under subsection (c) of this section, that the person with respect to whom the hearing was held remains mentally ill to the extent that the person is likely to injure himself or others if not committed, the Commission shall order the renewal of the commitment of the person for an additional term not to exceed one year and shall promptly report that fact, in writing, to the Court. The report shall contain the Commission's findings of fact and conclusions of law. A copy of the report shall be served by registered mail on the person with respect to whom the hearing was held and by mail on the person's attorney.

(f) If a petition for a renewal of an order of commitment is pending at the expiration of the commitment period ordered under section 21-545 or this section, the Court may, for good cause shown, extend the period of commitment pending resolution of the renewal petition.

(g) Within the last 30 days of the period of commitment, the chief clinical officer of the Department, or the chief of service of the facility, hospital, or mental health provider to which a person is committed, shall notify the Court which ordered the person's commitment pursuant to section 21-545 or this section of the decision not to seek renewal of commitment. Notice to the Court shall be in writing and a copy of the notice shall be mailed to the person who was committed and the person's attorney.

(h)(1) A person for whom the Commission orders renewed commitment pursuant to subsection (e) of this section may seek a review of the Commission's order by the Superior Court of the District of Columbia, and the Commission, orally and in writing, shall advise the person of this right.

(2) A review of the Commission's order of renewed commitment, in whole or in part, may be made by a judge of the appropriate division sua sponte and shall be made upon a motion of one of the parties made pursuant to procedures established by rules of the Court. The reviewing judge shall conduct such proceedings as required by the rules of the Court.

(3) An appeal to the District of Columbia Court of Appeals may be made only after a judge of the Court has reviewed the Commission's order of renewed commitment.

(Dec. 10, 2004, 118 Stat. 3475, Pub. L. 108-450, § 7(a).)

Editor's notes. — Applicability of §§ 2(d), (e), (l)(2), (n), (r)(3) and (4), (t), and (u) of Law 14-283: Section 3 of Law 14-283 provided that section 2(d), (e), (l)(2), (n), (r)(3) and (4), (t), and (u) shall apply upon the enactment of legislation by the United States Congress that states the following: "Notwithstanding any other law, section 2(d), (e), (l)(2), (r)(3) and (4), (t), and (u) of the Mental Health Civil Commitment Act of 2002, adopted by the Council of the District of Columbia, is enacted into law."

§ 21-546. Periodic examinations of committed patients; procedure for examination and detention or release; petition to court.

(a) A person who has been committed for treatment pursuant to section 21-545 or section 21-545.01 shall be monitored by the chief clinical officer or the chief of service for the facility, hospital, or mental health provider to which the person has been committed. In doing so, the chief or service or chief clinical officer shall:

(1) Arrange for, at least every 90 days from the date on which the order was issued under section 21-545 or the date on which the renewed period of commitment begins pursuant to an order issued under section 21-545.01, an examination of the mental health of the committed person by a psychiatrist or qualified psychologist; and

(2) Promptly consider the reports of the psychiatrists or qualified psychologists conducting the examination, and order the committed person's immediate release from the commitment if the person is no longer mentally ill to the extent that the person is likely to injure himself or other persons if not committed.

(b) At the conclusion of an examination conducted pursuant to subsection (a)(1) of this section, the psychiatrist or qualified psychologist shall:

(1) Report his opinion as to whether the committed person is mentally ill and, if mentally ill, whether the committed person is likely to injure himself or others if not committed; and

(2) Determine whether the committed person is being treated in the least restrictive alternative possible and, if not, identify the least restrictive alternative for the committed person at that time.

(c)(1) Within 180 days from the date on which the order was issued under section 21-545 or the date on which the renewed period of commitment begins pursuant to an order issued under section 21-545.01, and at the committed person's own expense, the committed person may have an independent examination conducted by a psychiatrist or qualified psychologist obtained by the committed person. If a committed person who is indigent makes a written request for assistance with an examination under this section, the chief clinical officer shall assist the person in obtaining a psychiatrist or qualified psychologist to conduct the independent examination. A psychiatrist or qualified psychologist so obtained by an indigent person shall be compensated for his services out of any unobligated funds of the Department in an amount determined by the Department to be fair and reasonable.

(2) A psychiatrist or qualified psychologist who conducts an independent

examination of the committed person under this subsection shall submit a report that includes his opinion as to whether the committed person is:

(A) Mentally ill;

(B) Likely to injure himself or others as a result of mental illness if not committed; and

(C) Being treated in the least restrictive alternative possible.

(3) If the psychiatrist or qualified psychologist who conducted the independent examination determines that the committed person is not being treated in the least restrictive alternative possible, he shall identify the least restrictive treatment appropriate for the committed person at that time.

(d)(1) If the chief clinical officer of the Department or the chief of service for the facility, hospital, or mental health provider, after considering the reports of the psychiatrists or qualified psychologists conducting the examination pursuant to subsection (a)(1) of this section, determines that the committed person continues to be mentally ill to the extent that the person is likely to injure himself or other persons if not committed, but one or more of the psychiatrists or qualified psychologists who conducted independent examinations under subsection (c) of this section reports that the committed person is not mentally ill to that extent, the committed person may request a change of status or discharge from the chief clinical officer of the Department or the chief of service for the facility, hospital, or mental health provider, and, if denied, may petition the court for an order directing the person's release.

(2) If the reports of the psychiatrists or qualified psychologists who have examined the committed person under subsection (a) or subsection (c) of this section identify less restrictive treatment alternatives for the committed person and the chief clinical officer of the Department or the chief of service for the hospital, facility, or mental health provider does not implement the less restrictive form of treatment within 30 days of receipt of the report, the committed person may petition the court for an order directing the person's release to a less restrictive form of commitment.

(3) A petition filed with the court under this subsection shall be accompanied by the reports of the psychiatrists or qualified psychologists who conducted the examinations of the committed person, whether on behalf of the Department, hospital, or provider, or on behalf of the committed person.

(e) If the chief clinical officer of the Department or the chief of service for the facility, hospital, or mental health provider, after considering the reports of psychiatrists or qualified psychologists conducting an examination pursuant to subsections (a)(1) or (c)(1) of this section, orders the committed person's release from the commitment pursuant to subsections (a)(2) or (d)(1) of this section, then the chief clinical officer of the Department or the chief of service for the facility, hospital, or mental health provider shall promptly notify the court that ordered the commitment of that fact. If, as a result of a report of the psychiatrists or qualified psychologists conducting an examination pursuant to subsections (a)(1) or (c)(1) of this section, the committed person is moved from an inpatient treatment setting to a less restrictive treatment setting, the chief clinical officer of the Department or the chief of service for the facility, hospital, or mental health provider shall promptly notify the court that ordered the commitment of that fact.

(Sept. 14, 1965, 79 Stat. 756, Pub. L. 89-183, § 1; Feb 24, 1984, D.C. Law 5-48, § 11(a)(13), 30 DCR 5778; Apr. 30, 1988, D.C. Law 7-104, § 6(h), 35 DCR 147; Mar. 24, 1998, D.C. Law 12-81, § 14(i), 45 DCR 745; Dec. 18, 2001, D.C. Law 14-56, § 116(g)(3), 48 DCR 7674; Apr. 4, 2003, D.C. Law 14-283, § 2(v), 50 DCR 917.)

Prior Codifications. — 1981 Ed., § 21-546. 1973 Ed., § 21-546.

Effect of amendments. — D.C. Law 14-56 substituted "Department of Mental Health" for "Department of Human Services".

D.C. Law 14-283 rewrote the section which had read as follows: "§ 21-546. Periodic requests for examination of hospitalized patient; procedure for examination and detention or release; petition to court. "A patient hospitalized pursuant to a court order obtained under section 21-545, or his attorney, legal guardian, spouse, parent, or other nearest adult relative, may, upon the expiration of 90 days following the order and not more frequently than every 6 months thereafter, request, in writing, the chief of service of the hospital in which the patient is hospitalized, to have a current examination of his mental condition made by one or more physicians or qualified psychologists. If the request is timely it shall be granted. The patient may, at his own expense, have a duly qualified physician or qualified psychologist participate in the examination. In the case of such a patient who is indigent, the Department of Mental Health shall, upon the written request of the patient, assist him in obtaining a duly qualified physician or qualified psychologist to participate in the examination in the patient's behalf. A physician or qualified psychologist so obtained by an indigent patient shall be compensated for his services out of any unobligated funds of Department of Mental Health in an amount determined by it to be fair and reasonable. If the chief of service, after considering the reports of the physicians or qualified psychologists conducting the examination, determines that the patient is no longer mentally ill to the extent that he is likely to injure himself or other persons if not hospitalized, the chief of service shall order the immediate release of the patient. However, if the chief of service, after considering the reports, determines that the patient continues to be mentally ill to the extent that he is likely to injure himself or other persons if not hospitalized, but one or more of the physicians or qualified psychologists participating in the examination reports that the patient is not mentally ill to that extent, the patient may petition the court for an order directing his release. The petition shall be accompanied by the reports of the physicians or qualified psychologists who conducted the examination of the patient."

Temporary Amendment of Section. — Section 16(g)(3) of D.C. Law 14-51 substituted "Department of Mental Health" for "Department of Human Services" throughout the section.

Section 19(b) of D.C. Law 14-51 provided that the act shall expire after 225 days of its having taken effect.

Section 2(u) of D.C. Law 14-131 amended this section to read as follows:

"§ 21-546. Periodic examinations of committed patients; procedure for examination and detention or release; petition to court.

"(a) A person who has been committed for treatment pursuant to section 21-545 or section 21-545.01 shall be monitored by the chief clinical officer or the chief of service for the facility, hospital, or mental health provider to which the person has been committed. In doing so, the chief or service or chief clinical officer shall:

"(1) Arrange for, at least every 90 days from the date on which the order was issued under section 21-545 or section 21-545.01, an examination of the mental health of the committed person by a psychiatrist or qualified psychologist; and

"(2) Promptly consider the reports of the psychiatrists or qualified psychologists conducting the examination, and order the committed person's immediate release from the commitment if the person is no longer mentally ill to the extent that the person is likely to injure himself or other persons if not committed.

"(b) At the conclusion of an examination conducted pursuant to subsection (a)(1) of this section, the psychiatrist or qualified psychologist shall:

"(1) Report his opinion as to whether the committed person is mentally ill and, if mentally ill, whether the committed person is likely to injure himself or others if not committed; and

"(2) Determine whether the committed person is being treated in the least restrictive alternative possible and, if not, identify the least restrictive alternative for the committed person at that time.

"(c)(1) Within 180 days from the date on which the order was issued under section 21-545 or section 21-545.01 and at the committed person's own expense, the committed person may have an independent examination conducted by a psychiatrist or qualified psychologist obtained by the committed person. If a committed person who is indigent makes a

written request for assistance, the chief clinical officer shall assist the person in obtaining a psychiatrist or qualified psychologist to conduct the independent examination. A psychiatrist or qualified psychologist so obtained by an indigent person shall be compensated for his services out of any unobligated funds of the Department in an amount determined by the Department to be fair and reasonable.

"(2) A psychiatrist or qualified psychologist who conducts an independent examination of the committed person under this subsection shall submit a report that includes his opinion as to whether the committed person is:

"(A) Mentally ill;

"(B) Likely to injure himself or others as a result of mental illness if not committed; and

"(C) Being treated in the least restrictive alternative possible.

"(3) If the psychiatrist or qualified psychologist who conducted the independent examination determines that the committed person is not being treated in the least restrictive alternative possible, he shall identify the least restrictive treatment appropriate for the committed person at that time.

"(d)(1) If the chief clinical officer of the Department or the chief of service for the facility, hospital, or mental health provider, after considering the reports of the psychiatrists or qualified psychologists conducting the examination pursuant to subsection (a)(1) of this section, determines that the committed person continues to be mentally ill to the extent that the person is likely to injure himself or other persons if not committed, but one or more of the psychiatrists or qualified psychologists who conducted independent examinations under subsection (c) of this section reports that the committed person is not mentally ill to that extent, the committed person may petition the court for an order directing the person's release.

"(2) If the reports of the psychiatrists or qualified psychologists who have examined the committed person under subsection (a) or subsection (c) of this section identify less restrictive treatment alternatives for the committed person and the chief clinical officer of the Department or the chief of service for the hospital, facility, or mental health provider does not implement the less restrictive form of treatment within 14 days of receipt of the report, the committed person may petition the court for an order directing the person's release to a less restrictive form of commitment.

"(3) The petition filed with the court under this subsection shall be accompanied by the reports of the psychiatrists or qualified psychologists who conducted the examinations of the committed person, whether on behalf of the Department, hospital, or provider, or on behalf of the committed person."

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 16(g)(3) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(g)(3) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 116(g)(3) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

For temporary (90 day) amendment of section, see § 2(u) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(u) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(v) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(v) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 21-501.

Legislative history of Law 7-104. — For legislative history of D.C. Law 7-104, see Historical and Statutory Notes following § 21-501.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Legislative history of Law 14-51. — For D.C. Law 14-51, see notes following § 21-521.

Legislative history of Law 14-56. — For Law 14-56, see notes following § 21-521.

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

References in text. — Section 21-545.01, referred to in subsecs. (a), (a)(1), and (c)(1), is

enacted only upon enactment of certain legislation by the United States Congress.

CASE NOTES

ANALYSIS

Civil committees.
Constitutional rights of committee.
Construction and application.
Criminal committees.
Habeas corpus relief.
In general.
Outpatients.
Petition to court.
Powers and duties of hospital or institution.
Powers and duties of court.
Questions of law and fact.
Report of examining physician or psychologist.
Validity of related laws.

Civil committees.

Confinement of mentally ill rests upon basis substantially different from that which supports confinement of those convicted of crime as confinement of mentally ill depends not only upon validity of initial commitment but also upon continuing status of the patient. D.C. Code §§ 21-546, 21-548, 24-301(e). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Although hospital ultimately took position, that patient who had been civilly committed for mental illness was releasable, record of hearing, including testimony of hospital's chief of service that patient was both mentally ill and retarded, thus presenting dual problem, did not suggest release from civil commitment under the Ervin Act merely because patient was also commitable under the Retarded Citizens Act; therefore, remand for further proceedings would be required to determine if patient was no longer mentally ill to extent that he was likely to injure self or others if not hospitalized, in which case court could proceed to disposition solely under the Retarded Citizens Act, or if diagnosis did not permit release, in which case court would determine whether patient could be treated under both the Ervin Act and the Retarded Citizens Act. D.C. Code 1981, §§ 6-1901 et seq., 21-501 et seq., 21-546, 21-548. In re Hanna, 484 A.2d 537, 1984 D.C. App. LEXIS 538 (1984).

A civil committee is releasable, solely at instance of hospital's chief of service, if chief determines that patient is no longer mentally ill to extent that he is likely to injure himself or other persons if not hospitalized; thus, if chief determines, after an examination, that conditions which justify involuntary hospitalization of committee no longer exists, chief of service is required to immediately release patient. D.C. Code 1981, §§ 21-546, 21-548. In re Hanna, 484 A.2d 537, 1984 D.C. App. LEXIS 538 (1984).

Constitutional rights of committee.

Equal protection is not offended by allowing government or court opportunity to insure that standards for release of civilly committed patients are faithfully applied to patients committed after having been found not guilty by reason of insanity. D.C. Code §§ 21-546 to 21-548, 24-301(e). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Denying civil committee evidentiary hearing on her petition for order directing her release, due to her failure to present supporting expert opinion, did not violate due process; committee had hearing when she was initially committed, and again at time that her outpatient status was revoked, and was also entitled to and received internal reviews by hospital physicians. U.S. Const.Amend. 14; D.C. Code 1981, §§ 21-546(a), 21-548. In re Dow, 663 A.2d 1214, 1995 D.C. App. LEXIS 173 (1995).

Requirement that civilly committed patient support petition for order of release with expert opinion is constitutionally sufficient, and obviates need for hearings which would serve no useful purpose. U.S.C. Const.Amend. 14; D.C. Code 1981, § 21-546(a). In re Dow, 663 A.2d 1214, 1995 D.C. App. LEXIS 173 (1995).

Even though due process considerations were present in transfer of patient from outpatient status to confinement in psychiatric hospital pursuant to commitment order, patient's due process rights were not violated by failure of trial court to apply clear-and-convincing-standard of evidence in proceeding which redetermined that defendant was mentally ill and dangerous, resulting in patient's indefinite hospitalization, since, under original order, patient was required to participate in treatment regimen prescribed by hospital staff and was specifically subject to hospitalization if his condition deteriorated, the risk of erroneous hospitalization was low because of many safeguards which were made available, and government assumed burden of establishing need for inpatient treatment. U.S. Const.Amends. 5, 14; D.C. Code 1981, § 21-546. In re Mills, 467 A.2d 971, 1983 D.C. App. LEXIS 516 (1983).

Under statute governing commitment proceedings and under original commitment order, patient originally committed to care and custody of hospital on outpatient basis had legitimate expectation that he might continue in outpatient status unless hospital was able to satisfy court that hospitalization was least re-

strictive appropriate alternative, which expectation was one of substance sufficient to entitle patient to due process safeguards. D.C. Code 1981, §§ 21-545(b), 21-546; U.S. Const.Amends. 5, 14. In re Mills, 467 A.2d 971, 1983 D.C. App. LEXIS 516 (1983).

Stay of hospital superintendent's appeal from trial court's order dismissing hospital superintendent's petition for judicial hospitalization of allegedly mentally ill patient did not deny equal protection in that stay of release would be potentially available in any commitment proceeding under the Hospitalization of the Mentally Ill Act if certain criteria were satisfied. D.C. Code §§ 11-721, 21-501 et seq. In re Lomax, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

Construction and application.

Rule that patient committed to mental hospital after being found not guilty of offense by reason of insanity is entitled to periodic examinations by hospital staff and right to be examined by outside psychiatrist, and that if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing applies to all cases including those previously committed under statute providing for mandatory commitment of persons acquitted by reason of insanity. D.C. Code §§ 21-546 to 21-548, 24-301(d, e, g). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Criminal committees.

Statute governing release of persons acquitted by reason of insanity entitles patient to periodic examinations by hospital staff and right to be examined by outside psychiatrist and, if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing. D.C. Code §§ 21-546 to 21-548, 24-301(e). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Habeas corpus relief.

Administrative remedy for mental patient which must be exhausted prior to petition for habeas corpus is medical examination rather than request for examination and if examination has been conducted within six months prior to habeas corpus petition, the administrative remedy was exhausted. D.C. Code§§ 21-546, 21-548, 24-301, 24-301(d). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Only if required medical examination is in progress when mental patient's habeas corpus petition is filed has the patient failed to exhaust his administrative remedy of complete medical examination. D.C. Code §§ 21-546, 21-548, 24-301, 24-301(d). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

If mental patient is undergoing medical examination at time his petition for habeas corpus is filed, district court should defer action on the petition pending mental hospital's completion of the examination and if, after completion, the patient desires to continue with his petition, district court should proceed to determination of the issues. D.C. Code §§ 21-546, 21-548, 24-301, 24-301(d). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

When mental patient is seeking complete release from confinement, scope of judicial review of hospital administrator's decision is broader and the function of the hearing court is not simply to review the hospital's decision for unreasonableness, but rather itself to decide ultimate question of whether present status of patient is such that continued confinement is justifiable. D.C. Code §§ 21-546 to 21-549, 24-301(g). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

If adequate internal remedies of mental hospital are in process at time mental patient files habeas corpus petition, proper procedure is to delay action on petition rather than to dismiss it. D.C. Code § 21-546. Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

As habeas corpus proceeding on petition of mental patient for complete release from confinement is not strictly adversary in nature, conventional rules regarding burden of coming forward with evidence do not apply and hearing court and the parties bear equal responsibility to see that decision is had upon all the relevant evidence. D.C. Code §§ 21-546 to 21-549, 24-301(g). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Mental patient who seeks complete release from confinement by writ of habeas corpus need only establish, by preponderance of the evidence, that he is no longer likely to injure himself or other persons because of mental illness. D.C. Code §§ 21-546 to 21-549, 24-301(g). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Under District of Columbia law, if mental patient's petition for habeas corpus is based solely on grounds relating not to present status but rather to specific past events, question of whether new hearing is required is equivalent to that in case of a prisoner seeking release under habeas corpus or equivalent process. D.C. Code § 21-546. Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Delay of plenary hearing on mental patient's petition for habeas corpus was not justified by patient's failure to avail himself of his right to be examined by outside psychiatrist. D.C. Code § 21-546. Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Where mental hospital patient's habeas corpus petition for release from mental hospital was based on his mental health at time petition was filed, petition was not subject to dismissal on grounds that the merits of his claim had been determined in prior proceedings or that failure to present the issues in prior proceedings amounted to inexcusable neglect. D.C. Code §§ 21-546, 21-548, 24-301(e). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Where ten months had elapsed between denial of previous petition for habeas corpus and mental patient's subsequent petition, sufficient time had passed for patient to raise issue that his condition at time of petition warranted his release from confinement in mental institution. D.C. Code §§ 21-546, 21-548, 24-301(e); 18 U.S.C. § 2244(a). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Under District of Columbia law, petition for habeas corpus by mental patient seeking his release on ground that his present status no longer justify commitment may be dismissed as repetitive only if that ground was adequately heard and determined adversely to the patient in judicial proceeding within six months preceding the new application. D.C. Code § 21-546. Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Under District of Columbia law, even if previous application by mental patient on same grounds was heard and determined within six months preceding the new application, district court has full power to hold plenary hearing on the issue of patient's present mental condition if court believes that the interests of justice would thereby be served. D.C. Code § 21-546. Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

In reviewing on habeas corpus a civilly committed patient's confinement in a mental hospital, the court should satisfy itself that no less onerous disposition would serve purpose of commitment. D.C. Code §§ 21-501 to 21-591, 21-544, 21-545(b). Covington v. Harris, 419 F.2d 617, 1969 U.S. App. LEXIS 13253 (C.A.D.C. 1969).

The principal purpose of limited judicial review by way of habeas corpus of administrative action of Saint Elizabeths Hospital confining petitioner in John Howard (maximum security) Pavilion is to insure that the decision makers have (1) reached a reasoned and not unreasonable discretion, (2) by employing proper criteria, and (3) without overlooking anything of substantial relevance. Covington v. Harris, 419 F.2d 617, 1969 U.S. App. LEXIS 13253 (C.A.D.C. 1969).

Evidence adduced by petitioner seeking release on habeas corpus from mental institution to which he had been confined pursuant to his acquittal of criminal charges for insanity was insufficient to establish that he had made necessary recovery to point where he would be free from abnormal mental condition or that his release would not expose him or public to danger in reasonably foreseeable future. D.C. Code 1951, § 21-301 et seq. Overholser v. O'Beirne, 302 F.2d 852, 1961 U.S. App. LEXIS 3436 (C.A.D.C. 1961).

Findings, on habeas corpus application for release from mental institution to which petitioner had been confined upon his acquittal for insanity, that petitioner was free from mental disease and mental defect and could not be dangerous by reason of any mental disease or defect did not meet standards required by statute in not containing finding of freedom from such abnormal mental condition as would make individual dangerous to himself or community in reasonably foreseeable future, irrespective of fact that his mental health might have improved. D.C. Code 1951, § 21-301 et seq. Overholser v. O'Beirne, 302 F.2d 852, 1961 U.S. App. LEXIS 3436 (C.A.D.C. 1961).

Where retired officer in military service had been committed on order of Secretary of Navy to hospital for insane and statutes made no provision for re-examination of person committed on order of Secretary, or for initiation, by the person committed of a proceeding to secure such re-examination, procedure of habeas corpus was available for the latter purpose. 24 U.S.C. §§ 191, 196a; D.C. Code 1940, §§ 21-320, 21-325, 32-618. Overholser v. Treibly, 147 F.2d 705, 1945 U.S. App. LEXIS 2191 (1945).

Patient's right to review his conditions of hospital treatment under statute and his right to petition for writ of habeas corpus at any time would not preclude court from making its inquiry to guaranty that its commitment order was implemented with least restrictive alternatives. D.C. Code § 21-546 et seq. In re Jones, 338 F. Supp. 428, 1972 U.S. Dist. LEXIS 15061 (1972).

In general.

If mental hospital has ignored its duty to the patient in its care, its misconduct may not be imputed to the patient and thereby prejudice patient's right to judicial review of his custody. D.C. Code §§ 21-546, 21-548, 24-301, 24-301(d). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Outpatients.

Although properly committed to hospital care pursuant to District of Columbia Hospitalization of the Mentally Ill Act, outpatients retained interests entitled to certain procedural safeguards, including requirement that individual be accorded prompt adversary hearing before committing court prior to permanent revocation of outpatient release. D.C. Code

1981, § 21-501 et seq. In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Petition to court.

Mental hospital's return to habeas corpus petition filed by mental hospital was not sufficient to warrant trial court in denying plenary hearing on patient's mental condition at time of filing of petition. D.C. Code §§ 21-546, 21-548, 24-301(e). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Mental hospital is adequately informed of a patient's desire to invoke such internal remedies as exist in hospital by filing of petition seeking judicial review in district court. D.C. Code § 21-546. Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Powers and duties of hospital or institution.

Efficient hospital administration requires courts to accord administrators much broader discretion in determining appropriateness of an inter-hospital disposition of mentally ill person than in assaying the need for hospitalization ab initio; however, additional restrictions beyond those necessarily entailed by hospitalization are as much in need of justification as any other deprivations of liberty; judicial review of internal decisions is not precluded. D.C. Code §§ 21-501 to 21-591. Covington v. Harris, 419 F.2d 617, 1969 U.S. App. LEXIS 13253 (C.A.D.C. 1969).

Powers and duties of court.

Weight to be given any expert opinion admitted into evidence at hearing to determine whether approval should be given to proposed release of inmate of mental hospital who was assigned to the hospital following acquittal of criminal charges on grounds of mental illness is exclusively for the judge; judge is not bound to accept the opinion of any expert witness or group of expert witnesses; hospital certification that patient is ready for conditional release should be viewed as an amalgamation of expert opinion which the trial court must weigh along with other evidence. D.C. Code § 24-301(e). United States v. Ecker, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

That prisoner was back in prison at time case was heard did not relieve court of obligation to appraise validity of prison officials' continuing policy of commitments without hearing to mental institutions, inasmuch as prisoner was still subject to that policy. D.C. Code §§ 21-545, 21-546 et seq., 24-302. Matthews v. Hardy, 420 F.2d 607, 1969 U.S. App. LEXIS 10958 (C.A.D.C. 1969), writ of certiorari denied by 397 U.S. 1010, 90 S. Ct. 1231, 25 L. Ed. 2d 423, 1970 U.S. LEXIS 2387 (1970).

In determining whether chief of service of hospital had released civilly committed patient, or had, in fact, concluded that patient was releasable, trial court had no authority to review chief's determination regarding patient's alleged mental illness on merits, since release was discretionary with hospital; rather, trial court was limited to determining whether hospital's assessment was "permissible and reasonable," i.e., whether decision was based solely on statutory grounds and not motivated by concerns incompatible with the aims of the Ervin Act. D.C. Code 1981, §§ 21-501 et seq., 21-546, 21-548. In re Hanna, 484 A.2d 537, 1984 D.C. App. LEXIS 538 (1984).

Court in commitment proceeding is not limited to polarized choice between indefinite hospitalization and unconditional release, since entire spectrum of services is available, including outpatient treatment, foster care, halfway houses, day hospitals, nursing homes, and others, and court has duty to explore alternatives both within mental hospital and outside hospital, and is required to select least restrictive alternative which would serve purposes of commitment. D.C. Code 1981, §§ 21-545(b), 21-546. In re Mills, 467 A.2d 971, 1983 D.C. App. LEXIS 516 (1983).

Questions of law and fact.

Presence of abnormal mental condition, and extent to which it impairs mental or emotional processes and controls, are questions of fact; how substantial such an impairment must be to be considered a mental illness is matter of law. D.C. Code §§ 21-546, 21-548, 24-301(e). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Likelihood of future misconduct of mental patient who seeks release from confinement, type of misconduct to be expected and its probable frequency are questions of fact; whether the expected harm, and its apparent likelihood, are sufficiently great to warrant coercive intervention are questions of law. D.C. Code §§ 21-546, 21-548, 24-301(e). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Report of examining physician or psychologist.

Physician's report indicating that civil committee was doing well "with the support and structure of the ward" and that she did "not appear to present any danger to herself or others" did not entitle committee to evidentiary hearing on her petition for an order directing her release, where report warned against committee's release because she continued to need treatment for her "long history of substance abuse and psychiatric disturbance." D.C. Code 1981, § 21-546(a). In re Dow, 663 A.2d 1214, 1995 D.C. App. LEXIS 173 (1995).

Validity of related laws.

Release provisions of statute governing commitment to mental hospital of one found not

guilty by reason of insanity are valid even though they differ from civil commitment procedures by authorizing court review of hospital's decision to release patient. D.C. Code §§ 21-546 to 21-548, 24-301(e). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

§ 21-547. Judicial determination of petition filed under section 21-546; order; psychiatrists and qualified psychologists as witnesses.

(a) In considering a petition filed under section 21-546, the court shall consider the testimony of the psychiatrists or qualified psychologists who participated in the examination of the committed person, and the reports of the psychiatrists or qualified psychologists accompanying the petition. After considering the testimony and reports, the court shall either:

(1) Reject the petition and order the continued commitment of the person; or

(2) Order the chief clinical officer of the Department or the chief of service for the hospital, facility, or mental health provider to immediately implement the least restrictive treatment or immediately release the committed person from the commitment.

(b) A psychiatrist or qualified psychologist participating in the examination of the committed person shall be a competent and compellable witness at any trial or hearing held pursuant to this chapter.

(Sept. 14, 1965, 79 Stat. 757, Pub. L. 89-183, § 1; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(14), 30 DCR 5778; Apr. 4, 2003, D.C. Law 14-283, § 2(w), 50 DCR 917.)

Prior Codifications. — 1981 Ed., § 21-547. 1973 Ed., § 21-547.

Effect of amendments. — D.C. Law 14-283 rewrote the section which had read as follows: "§ 21-547. Judicial determination of petition filed under section 21-546; order; physicians and qualified psychologists as witnesses." "In considering a petition filed under section 21-546, the court shall consider the testimony of the physicians or qualified psychologists who participated in the examination of the patient, and the reports of the physicians or qualified psychologists accompanying the petition. After considering the testimony and reports, the court shall either (1) reject the petition and order the continued hospitalization of the patient, or (2) order the chief of service to immediately release the patient. A physician or qualified psychologist participating in the examination shall be a competent and compellable witness at any trial or hearing held pursuant to this chapter."

Temporary Amendment of Section. — Section 2(v) of D.C. Law 14-131 amended this section to read as follows:

"(a) In considering a petition filed under section 21-546, the court shall consider the testimony of the psychiatrists or qualified psychologists who participated in the examination of the committed person, and the reports of the psychiatrists or qualified psychologists accompanying the petition. After considering the testimony and reports, the court shall either:

"(1) Reject the petition and order the continued commitment of the person; or

"(2) Order the chief clinical officer of the Department or the chief of service for the hospital, facility, or mental health provider to immediately implement the least restrictive treatment or immediately release the committed person from the commitment.

"(b) A psychiatrist or qualified psychologist participating in the examination of the committed person shall be a competent and compellable witness at any trial or hearing held pursuant to this chapter."

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(v) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(v) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(w) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(w) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 21-501.

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

CASE NOTES

ANALYSIS

Reviewable orders.
Right to trial by jury.
Rights of criminal committees.
Validity of related laws.

Reviewable orders.

In absence of provision in the Hospitalization of the Mentally Ill Act limiting government's right of appeal, statute making reviewable all final orders of the superior court gives the government the right to appeal from an order releasing an allegedly mentally ill person from custody. D.C. Code §§ 11-721, 21-501 et seq. In re Lomax, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

Under statute making reviewable all final orders of the superior court, hospital superintendent from whose custody allegedly mentally ill patient had been released by order of trial court in civil commitment proceedings was "aggrieved" by trial court's judgment and, therefore, would be a proper party to appeal. D.C. Code §§ 11-721, 21-501 et seq. In re Lomax, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

Right to trial by jury.

Civil committee has right to jury trial on questions of mental illness and dangerousness, whereas criminal acquittee who has entered plea of not guilty by reason of insanity is committed without prior hearing and is entitled only to bench trial at which he, not the Government, bears the burden of proof. D.C. Code 1981, §§ 21-524 to 21-547, 24-301(d)(2), (k). Walls v. United States, 601 A.2d 54, 1991 D.C. App. LEXIS 335 (1991).

Rights of criminal committees.

Insanity acquittee was not entitled to release merely because he had been hospitalized for period longer than he could have been incarcerated had he been convicted. D.C. Code 1981, §§ 21-545(b), 24-301(d)(1, 2), (e, j). Jones v. United States, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95 (U.S.Dist.Col. 1983).

Transfer of prisoners to mental hospital requires protective procedures at least similar to those provided in 1964 Civil Commitment Act providing full system of procedural safeguards before finding of mental illness can be made. D.C. Code §§ 21-501 et seq., 21-543, 21-545 to 21-547, 24-106, 24-302, 24-303. Matthews v. Hardy, 420 F.2d 607, 1969 U.S. App. LEXIS 10958 (C.A.D.C. 1969), writ of certiorari denied by 397 U.S. 1010, 90 S. Ct. 1231, 25 L. Ed. 2d 423, 1970 U.S. LEXIS 2387 (1970).

Under statute providing that if director of department of corrections believes prisoner is mentally ill, he can refer prisoner to psychiatrist and, if psychiatrist concurs in that belief, director can then transfer prisoner to mental hospital, before prisoner can be involuntarily transferred he is entitled to judicial hearing, jury trial, and same rights of notice, counsel and cross-examination as are provided for in 1964 Civil Commitment Act and same procedures for release from hospital as are embodied in the Act. D.C. Code§§ 21-501 et seq., 21-543, 21-545 to 21-547, 24-106, 24-302, 24-303. Matthews v. Hardy, 420 F.2d 607, 1969 U.S. App. LEXIS 10958 (C.A.D.C. 1969), writ of certiorari denied by 397 U.S. 1010, 90 S. Ct. 1231, 25 L. Ed. 2d 423, 1970 U.S. LEXIS 2387 (1970).

Rule that prior criminal conduct cannot be deemed sufficient justification for substantial differences in procedures and requirements for commitment of those found not guilty by reason of insanity and other mentally ill persons applies whether plea of insanity is raised by defendant, prosecutor or court. D.C. Code §§ 21-501 to 21-591. Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Persons found not guilty by reason of insanity must be given judicial hearing with procedures substantially similar to those in civil commitment proceedings. D.C. Code §§ 21-545(b), 24-301(a, d). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Validity of related laws.

Prior criminal conduct cannot be deemed sufficient justification for substantial differences in procedures and requirements for commitment of those found not guilty by reason of insanity and other mentally ill persons. D.C.

Code §§ 21-501 to 21-591. Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Release provisions of statute governing commitment to mental hospital of one found not guilty by reason of insanity are valid even though they differ from civil commitment procedures by authorizing court review of hospital's decision to release patient. D.C. Code §§ 21-546 to 21-548, 24-301(e). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

§ 21-548. Request for revocation of outpatient status; confinement pending decision on revocation of outpatient status; hearing on outpatient revocation petition.

(a) A person who has been committed under section 21-545 or section 21-545.01 and is receiving outpatient treatment may be transferred to a more restrictive treatment setting, including inpatient hospitalization, or a facility certified for emergency observation and diagnosis, pursuant to a court order, after a hearing, upon the court finding, based upon clear and convincing evidence, that:

(1) The person who is committed has failed to comply with a material condition of his outpatient treatment and a more restrictive treatment alternative is required to prevent the person from injuring himself or others; or

(2) There has been a significant change in the mental illness of the person who is committed and a more restrictive treatment alternative is required to prevent the person from injuring himself or others.

(b)(1) If the Department, hospital, facility, or mental health provider providing treatment to a person committed under section 21-545 or section 21-545.01 determines that a committed person who is receiving outpatient treatment is, as a result of mental illness, likely to injure himself or others if he is not immediately detained, the chief clinical officer of the Department, or his designee, or the chief of service of a hospital, facility, or mental health provider, may take the committed person into custody and transfer the person to an inpatient hospital setting or a facility certified for emergency observation and diagnosis, or may request that an officer authorized to make arrests in the District of Columbia take the committed person into custody and transfer the person to an inpatient hospital setting or to a facility certified for emergency observation and diagnosis. If the committed person is hospitalized or detained at a facility not operated by the Department, the chief of service, or his designee, from that hospital or facility shall immediately notify the chief clinical officer for the Department of the admission by telephone.

(2) Within 24 hours of a committed person's transfer from outpatient to inpatient treatment, the Department, the hospital, or the facility certified for emergency observation and diagnosis where the person is detained shall notify the court of:

(A) The committed person's detention and provide the court with a detailed affidavit reciting the circumstances of the person's transfer from outpatient status;

(B) The recent actions of the committed person that brought about the inpatient detention; and

(C) If known, whether the hospital, facility, or the Department has determined whether to seek a revocation of the committed person's outpatient status for a period of more than 5 days.

(3) Within 24 hours of the committed person's transfer to a more restrictive treatment setting, the hospital or facility shall give the committed person a copy of the notice and affidavit filed with the court as well as written notice of the person's rights to release or to an adversarial judicial hearing. The hospital or facility shall notify the attorney of record of the committed person's hospitalization or transfer to a facility certified for emergency observation and diagnosis and provide the attorney with a copy of the notice and affidavit filed with the court.

(4) The court shall conduct an ex parte review of the notice and affidavit within 24 hours of filing and determine whether the change from outpatient status to inpatient status at a hospital or facility certified for emergency observation and diagnosis is supported by probable cause that the committed person was likely to injure himself or other persons unless immediately hospitalized or transferred to a facility certified for emergency observation and diagnosis. If the court finds that the change in the treatment setting is supported by probable cause, the hospital may detain the committed patient for 5 days from the date of the order. If the court finds that the change in the treatment setting is not supported by probable cause, the court shall order the committed person's immediate release from the hospital or facility certified for emergency observation and diagnosis. The court shall appoint counsel to represent the committed person if it is determined that the attorney of record is no longer available to represent the person about whom a notice of rehospitalization has been filed.

(5) The hospital or facility shall release the committed person at the end of 5 days from the date of the order, unless during that time the hospital, Department, or facility has filed a petition with the court to revoke outpatient treatment. The court shall schedule a hearing on the petition to revoke outpatient treatment within 21 days of the committed person's hospitalization or detention. The court, for good cause, may continue the hearing. At the conclusion of the hearing, if the court finds that inpatient treatment at a hospital or facility certified for emergency observation and diagnosis is the least restrictive treatment alternative available and required to prevent the person from injuring himself or others as a result of mental illness, the hospital or facility may continue to detain the committed person for the remainder of the term of commitment. If the court finds that inpatient treatment at a hospital or facility certified for emergency observation and diagnosis is not supported, the court shall order the committed person's immediate release and return to outpatient status.

(6) The criteria set forth in section 21-526 for determining when the maximum periods of time may be extended shall apply to this section.

(Sept. 14, 1965, 79 Stat. 757, Pub. L. 89-183, § 1; Apr. 4, 2003, D.C. Law 14-283, § 2(x), 50 DCR 917.)

Prior Codifications. — 1981 Ed., § 21-548. 1973 Ed., § 21-548.

Effect of amendments. — D.C. Law 14-283 rewrote the section which had read as follows: "§ 21-548. Periodic examinations by hospital authorities; release." "The chief of service of a public or private hospital shall, as often as practicable, but not less often than every six months, examine or cause to be examined each patient admitted to a hospital pursuant to this subchapter and if he determines on the basis of the examination that the conditions which justified the involuntary hospitalization of the patient no longer exist, the chief of service shall immediately release the patient."

Temporary Amendment of Section. — Section 2(w) of D.C. Law 14-131 amended this section to read as follows:

"§ 21-548. Request for revocation of outpatient status; confinement pending decision on revocation of outpatient status; hearing on outpatient revocation petition.

"(a) A person who has been committed under section 21-545 or section 21-545.01 and is receiving outpatient treatment may be transferred to a more restrictive treatment setting, including inpatient hospitalization, pursuant to a court order, after a hearing, upon the court finding, based upon clear and convincing evidence, that:

"(1) The person who is committed has failed to comply with a material condition of his outpatient treatment and a more restrictive treatment alternative is required to prevent the person from injuring himself or others; or

"(2) There has been a significant change in the mental illness of the person who is committed and a more restrictive treatment alternative is required to prevent the person from injuring himself or others.

"(b) If the Department, hospital, facility, or mental health provider providing treatment to a person committed under section 21-545 or section 21-545.01 determines that a committed person who is receiving outpatient treatment is, as a result of mental illness, likely to injure himself or others if he is not immediately detained, the chief clinical officer of the Department or his designee, or the chief of service of a hospital, facility, or mental health provider, may take the committed person into custody and transfer the person to an inpatient hospital setting. If the committed person is hospitalized at a facility not operated by the Department, the chief of service or his designee from that hospital shall immediately notify the chief clinical officer for the Department of the admission by telephone.

"(1) Within 24 hours of a committed person's transfer from outpatient to inpatient treatment, the Department or the hospital where the person is detained shall notify the court of:

"(A) A committed person's hospitalization and provide the court with a detailed affidavit reciting the circumstances of the person's transfer to inpatient status;

"(B) The recent actions of the committed person that brought about the inpatient detention; and

"(C) If known, whether the hospital or the Department has determined whether to seek a revocation of the committed person's outpatient status for a period of more than 5 days.

"(2) Within 24 hours of the committed person transfer to a more restrictive treatment setting, the hospital shall give the committed person a copy of the notice and affidavit filed with the court as well as written notice of the person's rights to release or to an adversarial judicial hearing. The hospital shall notify the attorney of record of the committed person's hospitalization or transfer to a more restrictive treatment setting and provide the attorney with a copy of the notice and affidavit filed with the court.

"(3) The court shall conduct an ex parte review of the notice and affidavit within 24 hours of filing and determine whether the change from outpatient status to inpatient status is supported by probable cause that the committed person was likely to injure himself or other persons unless immediately hospitalized or transferred to a more restrictive treatment setting. If the court finds that the change in the treatment setting is supported by probable cause, the hospital may detain the committed patient for 5 days from the date of the order. If the court finds that the change in the treatment setting is not supported by probable cause, the court shall order the committed person's immediate release from the hospital. The court shall appoint counsel to represent the committed person if it is determined that the attorney of record is no longer available to represent the person about whom a notice of rehospitalization has been filed.

"(4) The hospital shall release the committed person at the end of 5 days of inpatient treatment, unless during that time the hospital has filed a petition with the court to revoke outpatient treatment. The court shall schedule a hearing on the petition to revoke outpatient treatment within 21 days of the committed person's hospitalization. Upon the request of the committed person, the court, for good cause, may continue the hearing. At the conclusion of the hearing, if the court finds that inpatient treatment is the least restrictive treatment alternative available and required to prevent the person from injuring himself or others as a result of mental illness, the hospital may continue to detain the committed person for the remainder of the term of commitment. If the court finds that inpatient treatment is not supported, the court shall order the committed

person's immediate release and return to outpatient status.

"(5) The criteria set forth in section 21-526 for determining when the maximum periods of time may be extended shall apply to this section."

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(w) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(w) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(x) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(x) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

References in text. — Section 21-545.01, referred to in subsec. (a), is enacted only upon enactment of certain legislation by the United States Congress.

CASE NOTES

ANALYSIS

Civil committees.
Constitutional rights of committee.
Construction and application.
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Civil committees.

A civil committee is releasable, solely at instance of hospital's chief of service, if chief determines that patient is no longer mentally ill to extent that he is likely to injure himself or other persons if not hospitalized; thus, if chief determines, after an examination, that conditions which justify involuntary hospitalization of committee no longer exists, chief of service is required to immediately release patient. D.C. Code 1981, §§ 21-546, 21-548. In re Hanna, 484 A.2d 537, 1984 D.C. App. LEXIS 538 (1984).

Constitutional rights of committee.

Equal protection requires that standards governing release of persons who have been acquitted on criminal charges because of insanity and who have been confined for period equal to the maximum sentence authorized for their crimes be substantially the same as the standards applicable to civil committees. United States v. Ecker, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

Equal protection is not offended by allowing government or court opportunity to insure that standards for release of civilly committed patients are faithfully applied to patients committed after having been found not guilty by reason of insanity. D.C. Code §§ 21-546 to 21-548, 24-301(e). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Insanity acquittees' private interest to be free from confinement is more limited than interest of civil committees, in determining whether procedures provided insanity acquittees for release and conditional release violate due process. U.S. Const.Amend. 14. Brown v. United States, 682 A.2d 1131, 1996 D.C. App. LEXIS 192 (1996), writ of certiorari denied by 525 U.S. 988, 119 S. Ct. 458, 142 L. Ed. 2d 410, 1998 U.S. LEXIS 7215, 67 U.S.L.W. 3322 (1998).

Denying civil committee evidentiary hearing on her petition for order directing her release, due to her failure to present supporting expert opinion, did not violate due process; committee had hearing when she was initially committed, and again at time that her outpatient status was revoked, and was also entitled to and received internal reviews by hospital physicians. U.S. Const.Amend. 14; D.C. Code 1981, §§ 21-546(a), 21-548. In re Dow, 663 A.2d 1214, 1995 D.C. App. LEXIS 173 (1995).

Because postcommitment acquitees and civil committees are similarly situated, acquitees, as a matter of constitutional equal protection, are entitled to periodic reviews similar to that afforded to civil committees. U.S. Const. Amend. 14; D.C. Code §§ 21-548, 24-301(e, g, k). Jones v. United States, 396 A.2d 183, 1978 D.C. App. LEXIS 585 (1978).

Construction and application.

Though the term "injury," for purposes of revocation of outpatient commitment status resulting in inpatient hospitalization because subject is likely to injure herself as a result of mental illness, may suggest some element of danger, that danger need not be physical in nature, nor need it involve violence; all that is

required is that the subject be found likely, by reason of mental illness, to inadvertently place herself in a position of danger or to suffer harm. In re Perruso, 896 A.2d 255, 2006 D.C. App. LEXIS 157 (2006).

Construction with other statutes.

Although hospital ultimately took position, that patient who had been civilly committed for mental illness was releasable, record of hearing, including testimony of hospital's chief of service that patient was both mentally ill and retarded, thus presenting dual problem, did not suggest release from civil commitment under the Ervin Act merely because patient was also commitable under the Retarded Citizens Act; therefore, remand for further proceedings would be required to determine if patient was no longer mentally ill to extent that he was likely to injure self or others if not hospitalized, in which case court could proceed to disposition solely under the Retarded Citizens Act, or if diagnosis did not permit release, in which case court would determine whether patient could be treated under both the Ervin Act and the Retarded Citizens Act. D.C. Code 1981, §§ 6-1901 et seq., 21-501 et seq., 21-546, 21-548. In re Hanna, 484 A.2d 537, 1984 D.C. App. LEXIS 538 (1984).

Criminal committees.

Purpose of commitment following insanity acquittal, like that of civil commitment, is to treat individual's mental illness and protect him and society from his potential dangerousness and committed acquittee is entitled to release when he has recovered his sanity or is no longer dangerous. Jones v. United States, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95 (U.S.Dist.Col. 1983).

Insanity acquittee was not entitled to release merely because he had been hospitalized for period longer than he could have been incarcerated had he been convicted. D.C. Code 1981, §§ 21-545(b), 24-301(d)(1, 2), (e, j). Jones v. United States, 463 U.S. 354, 103 S. Ct. 3043, 77 L. Ed. 2d 694, 1983 U.S. LEXIS 95 (U.S.Dist.Col. 1983).

Rule that patient committed to mental hospital after being found not guilty of offense by reason of insanity is entitled to periodic examinations by hospital staff and right to be examined by outside psychiatrist, and that if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing applies to all cases including those previously committed under statute providing for mandatory commitment of persons acquitted by reason of insanity. D.C. Code §§ 21-546 to 21-548, 24-301(d, e, g). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Statute governing release of persons acquitted by reason of insanity entitles patient to periodic examinations by hospital staff and right to be examined by outside psychiatrist and, if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing. D.C. Code §§ 21-546 to 21-548, 24-301(e). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

Habeas corpus relief.

Administrative remedy for mental patient which must be exhausted prior to petition for habeas corpus is medical examination rather than request for examination and if examination has been conducted within six months prior to habeas corpus petition, the administrative remedy was exhausted. D.C. Code§§ 21-546, 21-548, 24-301, 24-301(d). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Only if required medical examination is in progress when mental patient's habeas corpus petition is filed has the patient failed to exhaust his administrative remedy of complete medical examination. D.C. Code §§ 21-546, 21-548, 24-301, 24-301(d). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

If mental patient is undergoing medical examination at time his petition for habeas corpus is filed, district court should defer action on the petition pending mental hospital's completion of the examination and if, after completion, the patient desires to continue with his petition, district court should proceed to determination of the issues. D.C. Code §§ 21-546, 21-548, 24-301, 24-301(d). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Mental hospital's return to habeas corpus petition filed by mental hospital was not sufficient to warrant trial court in denying plenary hearing on patient's mental condition at time of filing of petition. D.C. Code §§ 21-546, 21-548, 24-301(e). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Where mental hospital patient's habeas corpus petition for release from mental hospital was based on his mental health at time petition was filed, petition was not subject to dismissal on grounds that the merits of his claim had been determined in prior proceedings or that failure to present the issues in prior proceedings amounted to inexcusable neglect. D.C. Code §§ 21-546, 21-548, 24-301(e). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Where ten months had elapsed between denial of previous petition for habeas corpus and mental patient's subsequent petition, sufficient time had passed for patient to raise issue that his condition at time of petition warranted his release from confinement in mental institution.

D.C. Code §§ 21-546, 21-548, 24-301(e); 18 U.S.C. § 2244(a). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

In general.

A person is "mentally ill" if he suffers from abnormal condition of mind that substantially affects mental or emotional processes and substantially impairs behavioral control. D.C. Code §§ 21-546, 21-548, 24-301(e). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Confinement of mentally ill rests upon basis substantially different from that which supports confinement of those convicted of crime as confinement of mentally ill depends not only upon validity of initial commitment but also upon continuing status of the patient. D.C. Code §§ 21-546, 21-548, 24-301(e). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

If mental hospital has ignored its duty to the patient in its care, its misconduct may not be imputed to the patient and thereby prejudice patient's right to judicial review of his custody. D.C. Code §§ 21-546, 21-548, 24-301, 24-301(d). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Judicial review.

In determining whether chief of service of hospital had released civilly committed patient, or had, in fact, concluded that patient was releasable, trial court had no authority to review chief's determination regarding patient's alleged mental illness on merits, since release was discretionary with hospital; rather, trial court was limited to determining whether hospital's assessment was "permissible and reasonable," i.e., whether decision was based solely on statutory grounds and not motivated by concerns incompatible with the aims of the Ervin Act. D.C. Code 1981, §§ 21-501 et seq., 21-546, 21-548. In re Hanna, 484 A.2d 537, 1984 D.C. App. LEXIS 538 (1984).

Outpatients.

Revocation of mental patient's outpatient commitment and order of indefinite inpatient commitment was improper based on patient's failure to comply with prescribed course of outpatient treatment without reliable evidence that patient was likely to be dangerous as result of her mental illness. D.C. Code 1981, § 21-501 et seq. In re James, 507 A.2d 155, 1986 D.C. App. LEXIS 309 (1986).

Questions of law and fact.

Presence of abnormal mental condition, and extent to which it impairs mental or emotional processes and controls, are questions of fact; how substantial such an impairment must be to be considered a mental illness is matter of law. D.C. Code §§ 21-546, 21-548, 24-301(e). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Likelihood of future misconduct of mental patient who seeks release from confinement, type of misconduct to be expected and its probable frequency are questions of fact; whether the expected harm, and its apparent likelihood, are sufficiently great to warrant coercive intervention are questions of law. D.C. Code §§ 21-546, 21-548, 24-301(e). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Appropriate inquiry, for purposes of determining whether revocation of outpatient commitment status resulting in inpatient hospitalization is warranted because subject is likely to injure herself as a result of mental illness, is whether the subject is likely to injure herself in the future; this prediction does not depend on the individual having succeeded in causing injury to herself in the recent past. In re Perruso, 896 A.2d 255, 2006 D.C. App. LEXIS 157 (2006).

Sufficiency of evidence.

Evidence that allegedly mentally ill person violated material condition of her outpatient treatment by failing to take her medication, that there was, as a result, significant change in her mental state, that she was at risk of injuring herself because she tended to act on her delusions, which had increased in severity and frequency since she stopped taking her medication, and that only way to eliminate risk of injury would be to treat her as inpatient until she became optimally stable, was sufficient to establish that least restrictive treatment alternative for person was inpatient commitment. In re Perruso, 896 A.2d 255, 2006 D.C. App. LEXIS 157 (2006).

A trial court's revocation of outpatient commitment status resulting in inpatient hospitalization must be based on clear and convincing evidence that the patient would be "likely to injure herself as a result of mental illness" if she were permitted to remain at liberty. In re Perruso, 896 A.2d 255, 2006 D.C. App. LEXIS 157 (2006).

Clear and convincing evidence supported trial court's finding that allegedly mentally ill person would be likely to injure herself as a result of mental illness if she were permitted to remain at liberty, as would support revocation of her outpatient commitment status resulting in inpatient hospitalization; treating psychiatrist testified that allegedly mentally ill person was rehospitalized because she ceased taking her medication, which caused significant alteration in her mental health, and that until allegedly mentally ill person was stable she should not be restored to outpatient status, which would in all likelihood expose her to risk

of injury. In re Perruso, 896 A.2d 255, 2006 D.C. App. LEXIS 157 (2006).

Validity of related laws.

Release provisions of statute governing commitment to mental hospital of one found not guilty by reason of insanity are valid even though they differ from civil commitment procedures by authorizing court review of hospital's decision to release patient. D.C. Code §§ 21-546 to 21-548, 24-301(e). Bolton v. Harris, 395 F.2d 642, 1968 U.S. App. LEXIS 8036 (C.A.D.C. 1968).

§ 21-549. Preservation of other rights to release.

Nothing in this chapter prohibits a person from exercising a right presently available to him for obtaining release from confinement, including the right to petition for a writ of habeas corpus.

(Sept. 14, 1965, 79 Stat. 757, Pub. L. 89-183, § 1; Apr. 4, 2003, D.C. Law 14-283, § 2(y), 50 DCR 917.)

Prior Codifications. — 1981 Ed., § 21-549. 1973 Ed., § 21-549.

Effect of amendments. — D.C. Law 14-283 substituted "Nothing in this chapter prohibits" for "Sections 21-546 to 21-548 do not prohibit".

Temporary Amendment of Section. — Section 2(x) of D.C. Law 14-131 substituted "Nothing in this chapter prohibits" for "Sections 21-546 to 21-548 do not prohibit".

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(x) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(x) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(y) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(y) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

CASE NOTES

Habeas corpus relief.

When mental patient is seeking complete release from confinement, scope of judicial review of hospital administrator's decision is broader and the function of the hearing court is not simply to review the hospital's decision for unreasonableness, but rather itself to decide ultimate question of whether present status of patient is such that continued confinement is justifiable. D.C. Code §§ 21-546 to 21-549, 24-301(g). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

As habeas corpus proceeding on petition of mental patient for complete release from confinement is not strictly adversary in nature, conventional rules regarding burden of coming forward with evidence do not apply and hearing court and the parties bear equal responsibility to see that decision is had upon all the relevant evidence. D.C. Code §§ 21-546 to 21-549, 24-301(g). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Mental patient who seeks complete release from confinement by writ of habeas corpus need only establish, by preponderance of the evidence, that he is no longer likely to injure himself or other persons because of mental illness. D.C. Code §§ 21-546 to 21-549, 24-301(g). Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Petitioner involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity had right to treatment that was cognizable in habeas corpus, and law and justice required remand for hearing and findings on whether petitioner had received adequate treatment and, if not, the details and circumstances underlying the reason why he had not. D.C. Code 1961, §§ 21-501, 21-543, 21-561 to 21-564, 21-589, 24-301; 18 U.S.C. §§ 2241(c)(3), 2243. Rouse v. Cameron, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

§ 21-550. Surety.

The court in its discretion may require a petitioner under this subchapter to file an undertaking with surety to be approved by the court in such amount as the court deems proper, conditioned to save harmless the respondent by reason of costs incurred, including attorney's fees, if any, and damages suffered by the respondent, as a result of any action under this subchapter.

(Sept. 14, 1965, 79 Stat. 757, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-550. 1973 Ed., § 21-550.

§ 21-551. Nonresidents.

(a) If a person ordered committed to the Department by the court pursuant to section 21-545 is found by the Commission, subject to a review by the court, not to be a resident of the District of Columbia, and to be a resident of another place, he shall be transferred to the State of his residence if an appropriate institution of that State is willing to accept him. If the person is an indigent, the expense of transferring him, including the traveling expenses of necessary attendants, shall be borne by the District of Columbia.

(b) For the purposes of this section, the term "resident of the District of Columbia" means a person who voluntarily lives in the District of Columbia and has no present intention of removing himself from the District of Columbia. The term "resident of the District of Columbia" does not include persons who live in the District of Columbia solely for a temporary purpose. Residency is not affected by temporary absence from and the subsequent return to the District of Columbia. Residency shall not depend upon the reason that the person entered the District of Columbia, except to the extent that it bears upon whether they are in the District of Columbia for a temporary purpose.

(Sept. 14, 1965, 79 Stat. 757, Pub. L. 89-183, § 1; Apr. 4, 2003, D.C. Law 14-283, § 2(z), 50 DCR 917.)

Cross references. — Mentally ill persons found in certain federal reservations, expense of care and treatment, see § 21-906.

Persons hospitalized prior to September 15, 1964, see § 21-589.

Prior Codifications. — 1981 Ed., § 21-551. 1973 Ed., § 21-551.

Effect of amendments. — D.C. Law 14-283, in subsec. (a), substituted "the Department" for "a public hospital"; and rewrote subsec. (b) which had read as follows: "(b) For the purposes of this section, 'resident of the District of Columbia' means a person who has maintained his principal place of abode in the District of Columbia for more than one year immediately prior to the filing of the petition referred to in subsection (a) of section 21-541."

Temporary Amendment of Section. — Section 2(y) of D.C. Law 14-131, in subsec. (a), in the first sentence, substituted "the Department" for "a public hospital"; and amended subsec. (b) to read as follows:

"(b) For the purposes of this section, the term "resident of the District of Columbia" means a person who voluntarily lives in the District of Columbia and has no present intention of removing himself from the District of Columbia. The term "resident of the District of Columbia" does not include persons who live in the District of Columbia solely for a temporary purpose. Residency is not affected by temporary absence from and the subsequent return to the District of Columbia. Residency shall not depend upon the reason that the person entered the District of Columbia, except to the extent that it bears upon whether they are in the District of Columbia for a temporary purpose."

Section 5(b) of D.C. Law 14-131 provided that

the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(y) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(z) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(y) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(z) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

CASE NOTES

Analysis

Availability of treatment in jurisdiction.
Financial duties of District.
Presumptions and burden of proof.
Validity.

Availability of treatment in jurisdiction.

Before trial court exercised any authority it might have to order 14-year-old involuntarily committed orphan treated at public expense outside the District of Columbia, on ground that no suitable facilities were available within the District, the District was entitled to reasonable time to attempt to design a program for alternate local care and court was also to consider the public's as well as the patient's interest; public interest requires that a request for commitment of an extraordinary amount of public funds for treatment of a single patient be given closest administrative and judicial scrutiny. D.C. Code §§ 3-110, 21-541, 21-551, 32-405. District of Columbia v. H.J.B., 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Even assuming that where no reasonable program of treatment is available in the community a trial court has the power, over the objection of the District of Columbia, to order involuntarily committed mental patient treated outside the jurisdiction, it should refrain from exercise of that power until the District is given formal notice of the apparent adequacy of local treatment and facilities and allowed ample opportunity to design a program of alternative local care utilizing the sole wealth of the facilities and services which are available to it within the jurisdiction. D.C. Code §§ 3-110, 21-541, 21-551, 32-405. District of Columbia v. H.J.B., 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Financial duties of District.

District of Columbia has obligation to pay costs of medical treatment of one whom District has involuntarily civilly committed, whether or not individual is resident, until such time as another person or jurisdiction assumes responsibility for those costs. D.C. Code 1981, § 21-545. In re Myrick, 624 A.2d 1222, 1993 D.C. App. LEXIS 125 (1993).

Presumptions and burden of proof.

Insofar as "residence" was at issue in determining retarded orphan's ability to claim medical care from the District of Columbia government, the matter to be decided was whether, in light of all available indicia of residence, independent of her confinement at St. Elizabeths Hospital, orphan's presence in the District could properly be accounted for as the product of something more than a temporary sojourn; burden on the residence issue was with the government. D.C. Code §§ 3-110, 21-541, 21-551, 32-405. District of Columbia v. H.J.B., 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Validity.

Statute providing that a person committed to a public hospital but found not to be a resident of the District of Columbia is to be transferred to his state of residence if an appropriate institution in that state is willing to accept him may not be used to bar claim of a newly-arrived resident for medical public assistance since to do so would be unjustifiably discriminatory in violation of Fifth Amendment right to due process; also, resort to statute providing that all indigent insane persons residing in the District at the time they become insane are entitled to benefits of St. Elizabeths Hospital would also be invalid for such reason. D.C. Code §§ 21-551, 32-405; U.S. Const. Amend. 5. District of Columbia v. H.J.B., 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Subchapter V. Right to Communication; Exercise of Other Rights.

§ 21-561. Mail privileges; censored mail; return to sender; visiting hours.

(a) A person hospitalized in a public or private hospital pursuant to this chapter, or committed under sections 21-545, 21-545.01, or 21-548, may exercise the right to communicate with others as set forth in the Mental Health Consumers' Rights Protection Act of 2001, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code § 7-1231.01 et seq.).

(b) Repealed.

(c) This section does not prohibit the administrator of a hospital from making reasonable rules regarding visitation hours.

(Sept. 14, 1965, 79 Stat. 758, Pub. L. 89-183, § 1; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(15), 30 DCR 5778; Apr. 4, 2003, D.C. Law 14-283, § 2(aa), 50 DCR 917.)

Prior Codifications. — 1981 Ed., § 21-561. 1973 Ed., § 21-561.

Effect of amendments. — D.C. Law 14-283 rewrote subsecs. (a) and (c); and repealed subsec. (b).

Temporary Amendment of Section. — Section 2(z) of D.C. Law 14-131 repealed subsec. (b) and rewrote subsecs. (a) and (c) to read as follows:

"(a) A person hospitalized in a public or private hospital pursuant to this chapter, or committed under sections 21-545, 21-545.01, or 21-548, may exercise the right to communicate with others as set forth in the Mental Health Consumers' Rights Protection Act of 2001, effective December 18, 2001 (D.C. Law 14-56; 48 DCR 7674)."

"(c) This section does not prohibit the administrator of a hospital from making reasonable rules regarding visitation hours."

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(z) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(z) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(aa) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(aa) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

References in text. — Section 21-545.01, referred to in subsec. (a), is enacted only upon enactment of certain legislation by the United States Congress.

CASE NOTES

Confidentiality of correspondence.

Neither federal statute pertaining to mental incompetency after arrest, nor District of Columbia statute pertaining to mail privileges, conferred "a broad confidentiality" upon letters sent by defendant to various people while he was undergoing court-ordered mental observation at hospital. 18 U.S.C. § 4244; D.C. Code § 21-561. United States v. Ammidown, 341 F. Supp. 1355, 1972 U.S. Dist. LEXIS 14325 (1972), affirmed without opinion by 509 F.2d 538, 166 U.S. App. D.C. 205 (1975).

§ 21-562. Medical and psychiatric care and treatment; records.

A person detained as an emergency involuntary patient by or committed to the care of the Department, a provider, or a hospital for mental illness shall, during the detention or commitment, be entitled to medical and psychiatric care and treatment. The administrator or director of the Department, a provider, or a hospital shall keep records detailing all medical and psychiatric care and treatment received by a person admitted for treatment as a voluntary, non-protesting, emergency or committed patient under this chapter and the records shall be made available, consistent with the provisions of the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law 2-136; D.C. Official Code § 7-1201.01 et seq.), to the person's attorney, personal physician, or other treatment provider. The records shall be preserved by the administrator or director of the Department, hospital, facility, or mental health provider until the person has been released from treatment, or longer, as required by District of Columbia or federal laws and regulations.

(Sept. 14, 1965, 79 Stat. 758, Pub. L. 89-183, § 1; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(16), 30 DCR 5778; Apr. 4, 2003, D.C. Law 14-283, § 2(bb), 50 DCR 917.)

Cross references. — Refusal or limitation on disclosure of mental health information, see § 7-1202.06.

Prior Codifications. — 1981 Ed., § 21-562. 1973 Ed., § 21-562.

Effect of amendments. — D.C. Law 14-283 rewrote the section which had read as follows: "§ 21-562. Medical and psychiatric care and treatment; records." "A person hospitalized in a public hospital for a mental illness shall, during his hospitalization, be entitled to medical and psychiatric care and treatment. The administrator of each public hospital shall keep records detailing all medical and psychiatric care and treatment received by a person hospitalized for a mental illness and the records shall be made available, upon that person's written authorization, to his attorney, personal physician, or personal qualified psychologist. The records shall be preserved by the administrator until the person has been discharged from the hospital."

Temporary Amendment of Section. — Section 2(aa) of D.C. Law 14-131 amended this section to read as follows: "A person detained as an emergency involuntary patient by or committed to the care of the Department, a provider, or a hospital for mental illness shall, during the detention or commitment, be entitled to medical and psychiatric care and treatment. The administrator or director of the Department, a provider, or a hospital shall keep records detailing all medical and psychiatric care and treatment received by a person admitted for treatment as a voluntary, non-protesting, emergency or committed patient under this chapter and the records shall be made available, consistent with the provisions of the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law 2-136; D.C. Official Code § 7-1201.01 et seq.), to the person's attorney, personal physician, or other treatment provider. The records shall be preserved by the administrator or director of the Department, hospital, facility, or mental health provider until the person has been released from treatment, or longer, as required by District of Columbia or federal laws and regulations."

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(aa) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(aa) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(bb) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(bb) of Mental Health Civil Commitment Congressional Review Emergency Act

of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 21-501.

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

CASE NOTES

ANALYSIS

Availability of treatment within jurisdiction.
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Availability of treatment within jurisdiction.

Even assuming that where no reasonable program of treatment is available in the community a trial court has the power, over the objection of the District of Columbia, to order involuntarily committed mental patient treated outside the jurisdiction, it should refrain from exercise of that power until the District is given formal notice of the apparent adequacy of local treatment and facilities and allowed ample opportunity to design a program of alternative local care utilizing the sole wealth of the facilities and services which are available to it within the jurisdiction. D.C. Code §§ 3-110, 21-541, 21-551, 32-405. District of Columbia v. H.J.B., 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Before trial court exercised any authority it might have to order 14-year-old involuntarily committed orphan treated at public expense outside the District of Columbia, on ground that no suitable facilities were available within the District, the District was entitled to reasonable time to attempt to design a program for alternate local care and court was also to consider the public's as well as the patient's interest; public interest requires that a request for commitment of an extraordinary amount of public funds for treatment of a single patient be given closest administrative and judicial scrutiny. D.C. Code §§ 3-110, 21-541, 21-551, 32-405. District of Columbia v. H.J.B., 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Civil committees.

One hospitalized involuntarily cannot be relegated to unattended ward while hospital officials maintain pretext that he is being observed and diagnosed; custodial care is no more justified by labeling it "diagnosis" than by labeling it "treatment." D.C. Code § 21-562. In re Curry, 452 F.2d 1360, 1971 U.S. App. LEXIS 7548 (C.A.D.C. 1971).

Availability of treatment for persons civilly committed to hospital as mentally ill had been sufficiently demonstrated in case so that it was not necessary to decide question of whether court erred in ordering hospitalization at particular hospital in absence of showing that he would receive medical and psychiatric treatment there. D.C. Code 1961, § 21-562. In re Alexander, 372 F.2d 925, 1967 U.S. App. LEXIS 7643 (C.A.D.C. 1967).

Class actions.

District court had authority to appoint receiver to secure compliance with court orders in class action on behalf of mentally ill persons needing community based treatment and services in District of Columbia, even though legal predicate for suit was local law, where Congress, in subsequent legislation, explicitly mandated that District comply with court orders in case and authorized full use of district court's remedial powers. Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, §§ 2 et seq., 2(b)(1), 24 U.S.C. §§ 225 et seq., 225(b)(1); D.C. Code 1981, § 21-501 et seq. Dixon v. Barry, 967 F. Supp. 535, 1997 U.S. Dist. LEXIS 8692 (1997).

In class action on behalf of mentally ill persons needing community based treatment and associated services, evidence indicated that targeted class members had not received adequate treatment under goals of Service Development Plan designed to implement portions of consent decree. Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, §§ 2 et seq., 2(b)(1), 24 U.S.C. §§ 225 et seq., 225(b)(1); D.C. Code 1981, § 21-501 et seq. Dixon v. Barry, 967 F. Supp. 535, 1997 U.S. Dist. LEXIS 8692 (1997).

In class action on behalf of mentally ill persons needing community based treatment and associated services, evidence indicated that District of Columbia's substantial failure to comply with objectives for serving target class members was due in part to poor use of financial resources, poor physical plant conditions, major service gaps, lack of quality improvement system, and obstacles to system reform.

Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, §§ 2 et seq., 2(b)(1), 24 U.S.C. §§ 225 et seq., 225(b)(1); D.C. Code 1981, § 21-501 et seq. Dixon v. Barry, 967 F. Supp. 535, 1997 U.S. Dist. LEXIS 8692 (1997).

Construction and application.

The medical and psychiatric care and treatment mandated by the Hospitalization of the Mentally Ill Act must be broadly construed. D.C. Code § 21-562. Dixon v. Weinberger, 405 F. Supp. 974, 1975 U.S. Dist. LEXIS 14644 (1975).

Criminal committees.

One involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity has a right to treatment. D.C. Code 1961, §§ 21-501, 21-543, 21-561 to 21-564, 21-589, 24-301. Rouse v. Cameron, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

On issue of right to treatment of one involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity, effort should be to provide treatment which is adequate in light of present knowledge. D.C. Code 1961, §§ 21-501, 21-543, 21-561 to 21-564, 21-589, 24-301. Rouse v. Cameron, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

Continuing failure to provide suitable and adequate treatment of one involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity cannot be justified by lack of staff or facilities. D.C. Code 1961, §§ 21-501, 21-543, 21-561 to 21-564, 21-589, 24-301. Rouse v. Cameron, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

Federal treatment facilities.

Under the Hospitalization of the Mentally Ill Act, patients in federally administered federal institution in the District of Columbia have right to treatment which includes placement in facilities outside the institution where the institution has determined that such treatment is appropriate. D.C. Code§ 21-501 et seq. Dixon v. Weinberger, 405 F. Supp. 974, 1975 U.S. Dist. LEXIS 14644 (1975).

To the extent that federally administered mental institution located in the District of Columbia receives sums from treating patients confined pursuant to the Hospitalization of the Mentally Ill Act, the institution shares the responsibilities imposed by the Act to provide a full range of treatment as required in an individual case. D.C. Code § 21-501 et seq. Dixon v. Weinberger, 405 F. Supp. 974, 1975 U.S. Dist. LEXIS 14644 (1975).

The responsibility and involvement of federal mental institution located in the District of Columbia in working toward goal of providing suitable care and treatment directed to returning individuals to the community does not abruptly cease as a patient slowly moves from restrictive confinement in the institution to the less restrictive atmosphere of an alternative facility, pursuant to a plan of treatment dictated by the institution staff. D.C. Code § 21-501 et seq. Dixon v. Weinberger, 405 F. Supp. 974, 1975 U.S. Dist. LEXIS 14644 (1975).

With respect to patients confined pursuant to the Hospitalization of the Mentally Ill Act in federally administered mental institution located in the District of Columbia, as to those patients confined in the institution who are in need of care and treatment which the institution staff has determined include placement in facility outside the institution, the duty to provide such treatment by placement in alternative facilities is the joint obligation of the federal and District of Columbia governments. D.C. Code § 21-501 et seq. Dixon v. Weinberger, 405 F. Supp. 974, 1975 U.S. Dist. LEXIS 14644 (1975).

Habeas corpus.

In habeas corpus proceeding by patient in public mental hospital complaining of manner of confinement, government was entitled to remand, despite insufficiency of hospital records in record to support confinement, where importance, for purposes of judicial review, of inclusion of additional records may not have been sufficiently clear and government claimed that records were available to justify confinement. D.C. Code §§ 21-501 et seq., 21-562. Williams v. Robinson, 432 F.2d 637, 1970 U.S. App. LEXIS 8720 (C.A.D.C. 1970).

Alleged denial of mental patients' right to treatment would require remand of habeas corpus petition for a new hearing. D.C. Code § 21-562. Dobson v. Cameron, 383 F.2d 519, 1967 U.S. App. LEXIS 5203 (C.A.D.C. 1967).

Habeas corpus relief would be available to one involuntarily committed to public hospital as sexual psychopath but who is not receiving reasonably suitable and adequate treatment, and lack of such treatment could not be justified by lack of staff or facilities. D.C. Code 1961, §§ 21-562, 22-3503 to 22-3511, 22-3504, 22-3506, 22-3509. Millard v. Cameron, 373 F.2d 468, 1966 U.S. App. LEXIS 4767 (C.A.D.C. 1966).

Petitioner involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity had right to treatment that was cognizable in habeas corpus, and law and justice required remand for hearing and findings on whether petitioner had received adequate treatment and, if not, the details and circumstances underlying the reason why he had not. D.C. Code 1961, §§ 21-501, 21-543, 21-561 to 21-564, 21-589, 24-301; 18 U.S.C. §§ 2241(c)(3), 2243. Millard v. Cameron, 373

F.2d 468, 1966 U.S. App. LEXIS 4767 (C.A.D.C. 1966).

In general.

Purpose of involuntary hospitalization is treatment, not punishment. D.C. Code 1961, § 24-301(d). Rouse v. Cameron, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

Judicial powers upon failure to provide treatment.

Continuing failure to provide suitable and adequate treatment of one involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity cannot be justified by lack of staff or facilities. D.C. Code 1961, §§ 21-501, 21-543, 21-561 to 21-564, 21-589, 24-301. Rouse v. Cameron, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

If court finds that a mandatorily committed patient is in custody in violation of Constitution and laws, for failure to receive treatment, it may allow hospital a reasonable opportunity to initiate treatment, but if opportunity for treatment has been exhausted or is otherwise inappropriate conditional or unconditional release may be in order. D.C. Code 1961, §§ 21-501, 21-543, 21-561 to 21-564, 21-589, 24-301; 18 U.S.C. §§ 2241(c)(3), 2243. Rouse v. Cameron, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

District of Columbia Hospitalization of the Mentally Ill Act charges the trial court with the duty to become actively involved in the rehabilitative process of involuntarily committed patients. D.C. Code 1981, § 21-501 et seq. In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Judicial review.

When a district court is asked to review the medical judgment of a hospital staff on a question of internal administration, its function resembles that of an appellate court when it reviews agency action and, in deference to medical expertise, the hospital should be allowed to operate within a broad range of discretion; when district court is asked to review conditional release certification of person who has been acquitted on grounds of mental illness and confined to hospital for the mentally ill, court must decide whether the proposed release affords reasonable assurances for the public safety. D.C. Code § 24-301(d)(1), (e). United States v. Ecker, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

Until hospital can demonstrate existence and adequacy of mechanisms to insure complaining patient fair opportunity to place facts and arguments in administrative record, patient complaining of treatment or manner of confinement must be allowed opportunity to show, by reference to evidence outside hospital records, that even decision proper on face of records did not meet applicable standards; if patient relies upon evidence outside face of records, hospital may rebut showing by going beyond records as well. D.C. Code §§ 21-501 et seq., 21-562. Williams v. Robinson, 432 F.2d 637, 1970 U.S. App. LEXIS 8720 (C.A.D.C. 1970).

Where decision of hospital's administration challenged by mental patient related essentially to internal administration of the hospital such as patient's right to adequate treatment, transfer to less restrictive ward or conditional release, judicial review is limited to determination whether administrator of hospital made permissible and reasonable decision in view of relevant information and within broad range of discretion. D.C. Code § 21-562. Dixon v. Jacobs, 427 F.2d 589, 1970 U.S. App. LEXIS 10871 (C.A.D.C. 1970).

Efficient hospital administration requires courts to accord administrators much broader discretion in determining appropriateness of an inter-hospital disposition of mentally ill person than in assaying the need for hospitalization ab initio; however, additional restrictions beyond those necessarily entailed by hospitalization are as much in need of justification as any other deprivations of liberty; judicial review of internal decisions is not precluded. D.C. Code §§ 21-501 to 21-591. Covington v. Harris, 419 F.2d 617, 1969 U.S. App. LEXIS 13253 (C.A.D.C. 1969).

Least restrictive treatment conditions.

Right of mental hospital patient, who had been acquitted of criminal charges because of his insanity, to receive treatment under least restrictive conditions possible did not entitle him to obtain conditional release upon recommendation of the hospital without judicial review. D.C. Code § 24-301(e). United States v. Ecker, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

Mental hospital patient who had been acquitted on charges of rape and murder by reason of insanity had the right to treatment under the least restrictive conditions possible. D.C. Code § 24-301(d)(1). United States v. Ecker, 543 F.2d 178, 1976 U.S. App. LEXIS 12035 (C.A.D.C. 1976).

The principle of the least restrictive alternative is equally applicable to alternative dispositions within a mental hospital. D.C. Code §§ 21-501 to 21-591. Covington v. Harris, 419 F.2d 617, 1969 U.S. App. LEXIS 13253 (C.A.D.C. 1969).

Before a court can determine that hospital's decision to confine patient in maximum security ward is, within its broad discretion, permissible and reasonable in view of the relevant information, it must be able to conclude that hospital has considered and found inadequate all relevant alternative dispositions within hospital. D.C. Code §§ 21-501 to 21-591. Coving-

ton v. Harris, 419 F.2d 617, 1969 U.S. App. LEXIS 13253 (C.A.D.C. 1969).

At hearing on permanent revocation of outpatient release, hospital must establish that inpatient therapy is not the least restrictive alternative compatible with ends of rehabilitation for mentally ill individual. D.C. Code 1981, § 21-501 et seq. In re Richardson, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Mental health records.

When a patient is committed to a public mental hospital for treatment, hospital has a statutory obligation to make its records available to his counsel and to his personal physician, and justice demands no less for a patient who is committed to hospital for observation in preparation for criminal trial. D.C. Code § 21-562. United States v. Schappel, 445 F.2d 716, 1971 U.S. App. LEXIS 9861 (C.A.D.C. 1971).

Generally, when patient at public mental hospital seeks to challenge legality of decisions regarding treatment accorded him or manner of his confinement, hospital may not rely upon information or explanations not in patient's hospital record to justify decision; records on their face must be adequate to demonstrate propriety of challenged decisions and may not be rehabilitated by subsequent demonstration in court. D.C. Code §§ 21-501 et seq., 21-562. Williams v. Robinson, 432 F.2d 637, 1970 U.S. App. LEXIS 8720 (C.A.D.C. 1970).

Public mental hospital records disclosing only reports from hospital's security force detailing investigation of robbery and conclusion that patient was perpetrator and doctor's memorandum stating that patient had been identified as one who had threatened employee were, while sufficient to support interim determination that hospital security required patient's prompt transfer to maximum security unit, insufficient to support continued confinement in absence of showing that patient had been afforded reasonable opportunity to test evidence against him or that there was adequate plan of treatment. D.C. Code§§ 21-501 et seq., 21-562. Williams v. Robinson, 432 F.2d 637, 1970 U.S. App. LEXIS 8720 (C.A.D.C. 1970).

Public mental hospital records disclosing only reports from hospital's security force detailing investigation of robbery and conclusion that patient was perpetrator and doctor's memorandum stating that patient had been identified as one who had threatened employee were, while sufficient to support interim determination that hospital security required patient's prompt transfer to maximum security unit, insufficient to support continued confinement in absence of showing that patient had been afforded reasonable opportunity to test evidence against him or that there was adequate plan of treatment. D.C. Code§§ 21-501 et seq., 21-562. Williams v. Robinson, 432 F.2d 637, 1970 U.S. App. LEXIS 8720 (C.A.D.C. 1970).

That hospital to which mentally ill person has been civilly committed may not disclose hospital records to outside parties without patient's consent does not imply that it is forbidden to introduce them in court where they are relevant to patient's contentions on habeas corpus. D.C. Code § 21-562. Covington v. Harris, 419 F.2d 617, 1969 U.S. App. LEXIS 13253 (C.A.D.C. 1969).

Presumptions and burden of proof.

Under District of Columbia statute providing that a person hospitalized in public hospital for a mental illness shall be entitled to medical and psychiatric care and treatment, the hospital may be required to show that it is making a bona fide effort to cure or improve the patient and that the treatment provided is suited to his particular needs. D.C. Code § 21-562. Covington v. Harris, 419 F.2d 617, 1969 U.S. App. LEXIS 13253 (C.A.D.C. 1969).

On issue of right to treatment of one involuntarily committed on being acquitted of an offense by reason of insanity, hospital need not show that treatment will cure or improve him but only that there is bona fide effort to do so, and this requires hospital to show that initial and periodic inquiries are made into needs and conditions of patient with view to providing suitable treatment for him, and that the program provided is suited to his particular needs. D.C. Code 1961, §§ 21-501, 21-543, 21-561 to 21-564, 21-589, 24-301. Rouse v. Cameron, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

On issue of right to treatment of one involuntarily committed on being acquitted of an offense by reason of insanity, hospital need not show that treatment will cure or improve him but only that there is bona fide effort to do so, and this requires hospital to show that initial and periodic inquiries are made into needs and conditions of patient with view to providing suitable treatment for him, and that the program provided is suited to his particular needs. D.C. Code 1961, §§ 21-501, 21-543, 21-561 to 21-564, 21-589, 24-301. Rouse v. Cameron, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

Right to refuse treatment.

Even after a civil commitment proceeding, a trial court cannot override treatment decision of a mentally ill adult unless he or she has been adjudicated presently incompetent. In re Boyd, 403 A.2d 744, 1979 D.C. App. LEXIS 404 (1979).

Every competent adult has right to determine what shall be done with his own body, but once an individual becomes incompetent, state must act as parens patriae; as such, state has

duty and right to care for "best interest" of incompetent, even if that occasionally means overriding a decision made by individual while incompetent. In re Boyd, 403 A.2d 744, 1979 D.C. App. LEXIS 404 (1979).

In situation in which individual's life itself is not at stake, such individual, prior to incompetence, has objected, absolutely, to medical care on religious grounds, evidence demonstrates strong adherence to tenets of that faith, and there is no countervailing evidence of vacillation, the court in applying the "substituted judgment" test in determining whether to require such treatment, should conclude that the individual would reject medical treatment; in other, less clear situations, court should make putative decision by looking at nature, intensity, and longevity of patient's objection to medical care, the intrusiveness and side effects of proposed treatment and likelihood of cure or improvement with or without such treatment. U.S. Const. Amend. 1. In re Boyd, 403 A.2d 744, 1979 D.C. App. LEXIS 404 (1979).

Even if a state interest is sufficiently compelling to justify overriding incompetent patient's choice that she not receive certain medical treatment, trial court must order only the least intrusive form of treatment for the state's interest must necessarily decrease as degree of bodily invasion increases. U.S. Const. Amend. 1. In re Boyd, 403 A.2d 744, 1979 D.C. App. LEXIS 404 (1979).

§ 21-563. Use of restraints or seclusion; record of use.

A person who is hospitalized in a public or private hospital pursuant to this chapter has the right to be free from seclusion and restraint of any form that is not medically necessary or that is used as a means of coercion, discipline, convenience, or retaliation by staff, pursuant to the Mental Health Consumers' Rights Protection Act of 2001, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code § 7-1231.01 et seq.).

(Sept. 14, 1965, 79 Stat. 758, Pub. L. 89-183, § 1; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(17), 30 DCR 5778; Apr. 4, 2003, D.C. Law 14-283, § 2(cc), 50 DCR 917.)

Prior Codifications. — 1981 Ed., § 21-563. 1973 Ed., § 21-563.

Effect of amendments. — D.C. Law 14-283 rewrote the section which had read as follows: "§ 21-563. Use of mechanical restraints; record of use. A mechanical restraint may not be applied to a patient hospitalized in a public or private hospital for a mental illness unless the use of restraint is prescribed by a physician or qualified psychologist. If so prescribed, the restraint shall be removed whenever the condition justifying its use no longer exists. A use of a mechanical restraint, together with the reasons therefor, shall be made a part of the medical record of the patient."

Temporary Amendment of Section. — Section 2(bb) of D.C. Law 14-131 amended this section to read as follows: "§ 21-563. Use of restraints or seclusion; record of use. A person who is hospitalized in a public or private hospital pursuant to this chapter has the right to be free from seclusion and restraint of any form that is not medically necessary or that is used as a means of coercion, discipline, convenience, or retaliation by staff, pursuant to the Mental Health Consumers' Rights Protection Act of 2001, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code § 7-1231.01 et seq.)."

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(bb) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(bb) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(cc) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(cc) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 48 DCR 2784).

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 21-501.

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

§ 21-564. Exercise of property and other rights; notice of inability; persons hospitalized prior to September 15, 1964.

(a) A person admitted or committed for treatment pursuant to this chapter may not, by reason of the admission or treatment, be denied the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, vote, and hold a driver's license, unless the person has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity. If the chief clinical officer of the Department or the chief of service for the public or private hospital, facility, or provider in which the committed person is housed is of the opinion that the person is unable to exercise any of the rights referred to in this section, the chief clinical officer or chief of service shall immediately notify the person and the person's attorney, legal guardian, spouse, parents, or other nearest known adult relative, the Superior Court of the District of Columbia, the Commission, and the Mayor of that fact.

(b) A person in the District of Columbia who, by reason of a judicial decree ordering his hospitalization entered prior to September 15, 1964, is considered to be mentally incompetent and is denied the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, vote, or hold a driver's license solely by reason of the decree, shall, upon the expiration of the one-year period immediately following September 15, 1964, be deemed to have been restored to legal capacity unless, within the one-year period, affirmative action is commenced to have the person adjudicated mentally incompetent by a court of competent jurisdiction; provided, however, that in those cases in which a committee has heretofore been appointed and the committeeship has not been terminated by court action, such committee shall continue to act under the supervision of the Superior Court of the District of Columbia under its equity powers.

(Sept. 14, 1965, 79 Stat. 758, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(c)(3), (4); Mar. 24, 1998, D.C. Law 12-81, § 14(j), 45 DCR 745; Apr. 4, 2003, D.C. Law 14-283, § 2(dd), 50 DCR 917.)

Prior Codifications. — 1981 Ed., § 21-564. 1973 Ed., § 21-564.

Effect of amendments. — D.C. Law 14-283 rewrote subsec. (a) which had read as follows: "(a) A patient hospitalized pursuant to this chapter may not by reason of the hospitalization, be denied the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, vote, and hold a driver's license, unless the patient has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity. If the chief of service of the public or private hospital in which the patient is hospitalized is of the opinion that the patient is unable to exercise any of the rights referred to in this section, the chief of service shall immediately notify the patient and the patient's attorney, legal guardian, spouse, parents, or other nearest known adult relative, the Superior Court of the District of Columbia, the Commission on Mental Health, and the Mayor of the District of Columbia of that fact."

Temporary Amendment of Section. — Section 2(cc) of D.C. Law 14-131 amended subsec. (a) to read as follows:

"(a) A person admitted or committed for treatment pursuant to this chapter may not, by reason of the admission or treatment, be denied the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, vote, and hold a driver's license, unless the person has been adjudicated incompetent by a court of competent jurisdiction and

has not been restored to legal capacity. If the chief clinical officer of the Department or the chief of service for the public or private hospital, facility, or provider in which the committed person is housed is of the opinion that the person is unable to exercise any of the rights referred to in this section, the chief clinical officer or chief of service shall immediately notify the person and the person's attorney, legal guardian, spouse, parents, or other nearest known adult relative, the Superior Court of the District of Columbia, the Commission, and the Mayor of that fact."

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(cc) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(cc) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(dd) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(dd) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 48 DCR 2784).

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-546.

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

CASE NOTES

In general.

Only those hospitalized pursuant to Hospitalization of Mentally Ill Act are guaranteed by the civil rights act to dispose of property, execute instruments, make purchases, enter into contractual relationships, vote, or hold driver's license. D.C. Code 1961, § 24-301(a); D.C. Code § 21-564(a, b). Cameron v. Mullen, 387 F.2d 193, 1967 U.S. App. LEXIS 7257 (C.A.D.C. 1967).

Commitment to St. Elizabeth's hospital does not automatically render person incompetent for most purposes. D.C. Code 1961, § 24-301(a); D.C. Code § 21-564(a, b). Cameron v. Mullen, 387 F.2d 193, 1967 U.S. App. LEXIS 7257 (C.A.D.C. 1967).

Continued confinement of one involuntarily committed on being acquitted of an offense by reason of insanity depends not upon fact that he committed the acts, but upon his present mental condition. D.C. Code 1961, §§ 21-5-1, 21-543, 21-561 to 21-564, 21-589, 24-301. Rouse v. Cameron, 373 F.2d 451, 1966 U.S. App. LEXIS 4766 (C.A.D.C. 1966).

§ 21-565. Statement of release and adjudication procedures and of other rights.

Upon the admission of a person to a hospital under a provision of this chapter, the administrator shall deliver to him, and to his spouse, domestic partner, parents, or other nearest known adult relative, a written statement outlining in simple, nontechnical language all release procedures provided by this chapter, setting out all rights accorded to patients by this chapter, and describing procedures provided by law for adjudication of incompetency and appointment of trustees or committees for the hospitalized person.

(Sept. 14, 1965, 79 Stat. 759, Pub. L. 89-183, § 1; Sept. 12, 2008, D.C. Law 17-231, § 22(e), 55 DCR 6758.)

Prior Codifications. — 1981 Ed., § 21-565. 1973 Ed., § 21-565.

Effect of amendments. — D.C. Law 17-231 substituted "spouse, domestic partner" for "spouse".

Legislative history of Law 17-231. — For Law 17-231, see notes following § 21-501.

Subchapter VI. Miscellaneous Provisions.

§ 21-581. Proceedings instituted by Mayor of the District of Columbia.

Proceedings instituted by the Mayor of the District of Columbia to determine the mental condition of an alleged indigent mentally ill person or a person alleged to be mentally ill, with homicidal or otherwise dangerous tendencies, shall be according to the provisions of subchapter IV of this chapter.

(Sept. 14, 1965, 79 Stat. 759, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(c)(5)(A); Mar. 24, 1998, D.C. Law 12-81, § 14(k), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 21-581. 1973 Ed., § 21-581.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-546.

§ 21-582. Petitions, applications, or certificates of physicians or qualified psychologists.

(a) A petition, application, or certificate authorized under section 21-521, section 21-541(a), section 21-545.01, or section 21-548 may not be considered if made by a psychiatrist, physician, or qualified psychologist who:

(1) Is related by blood, marriage, or domestic partnership to the person about whom the petition, application, or certificate is made;

(2) Is financially interested in the hospital in which the person is to be detained; or

(3) Except in the case of psychiatrists, physicians, or qualified psychologists employed by the United States or the District of Columbia, are professionally or officially connected with the hospital or are employed on a contract basis by the Department.

(b) A petition, application, or certificate of a physician or qualified psychologist may not be considered unless it is based on personal observation and examination of the person made by the physician or qualified psychologist not more than 72 hours prior to the making of the petition, application, or certificate. The certificate shall set forth in detail the facts and reasons on which the physician or qualified psychologist based his opinions and conclusions.

(Sept. 14, 1965, 79 Stat. 759, Pub. L. 89-183, § 1; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(18), 30 DCR 5778; Apr. 4, 2003, D.C. Law 14-283, § 2(ee), 50 DCR 917; Sept. 12, 2008, D.C. Law 17-231, § 22(f), 55 DCR 6758.)

Prior Codifications. — 1981 Ed., § 21-582. 1973 Ed., § 21-582.

Effect of amendments. — D.C. Law 14-283 rewrote subsec. (a); and in subsec. (b), deleted "alleged mentally ill" from the first sentence. Prior to amendment, subsec. (a) had read as follows: "(a) A petition, application, or certificate authorized under section 21-521 and subsection (a) of section 21-541 may not be considered if made by a physician or qualified psychologist who is related by blood or marriage to the alleged mentally ill person, or who is financially interested in the hospital in which the alleged mentally ill person is to be detained,

or, except in the case of physicians or qualified psychologists employed by the United States or the District of Columbia, who are professionally or officially connected with the hospital."

D.C. Law 17-231, in subsec. (a)(1), substituted "blood, marriage, or domestic partnership" for "blood or marriage".

Temporary Amendment of Section. — Section 2(dd) of D.C. Law 14-131 amended subsec. (a) to read as follows:

"(a) A petition, application, or certificate authorized under section 21-521, section 21-541(a), section 21-545.01, or section 21-548 may not be considered if made by a psychiatrist, physician, or qualified psychologist who:

"(1) Is related by blood or marriage to the person about whom the petition, application, or certificate is made;

"(2) Is financially interested in the hospital in which the person is to be detained; or

"(3) Except in the case of psychiatrists, physicians, or qualified psychologists employed by the United States or the District of Columbia, are professionally or officially connected with the hospital.".; and in subsec. (b), in the first sentence, deleted "alleged mentally ill".

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(dd) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(dd) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(ee) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(ee) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 21-501.

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 21-501.

References in text. — Section 21-545.01, referred to in subsec. (a), is enacted only upon enactment of certain legislation by the United States Congress.

CASE NOTES

ANALYSIS

Admissibility of evidence.
Construction and application.
Procedural errors.
Qualification of petitioner—Physician-petitioner.
—Personal examination of committee, qualification of petitioner.

Admissibility of evidence.

The fact that Congress has chosen to permit psychiatrists to offer opinions on the issue of future dangerousness in specifically prescribed instances does not mean that absent specific legislation such testimony is admissible at other stages of those proceedings when Congress has chosen to remain silent. In re Wilson, 111 WLR 1065 (Super. Ct.).

Construction and application.

Court of Appeals construes Hospitalization of the Mentally Ill Act narrowly where its application results in curtailment of individual's liberty. D.C. Code 1981, §§ 21-501 to 21-592. In re Reed, 571 A.2d 801, 1990 D.C. App. LEXIS 59 (1990).

Literal compliance with requirements of subsection (b) of this section is required. In re Watts, 110 WLR 2581 (Super. Ct. 1982).

Procedural errors.

Defects in application for emergency hospitalization of person believed to be mentally ill are not irrelevant, but, rather, trial court quite properly should take such defects into account insofar as they bear upon reliability and integrity of application and information therein. D.C. Code 1981, §§ 21-524, 21-525, 21-582(a, b). In re Herman, 619 A.2d 958, 1993 D.C. App. LEXIS 21 (1993).

The imperfection of patient's initial admission to hospital for emergency psychiatric care by doctor who was not her physician did not impair validity of patient's continued detention where government met its burden of showing probable cause to believe that patient suffered from mental illness and was likely to injure herself if not retained. D.C. Code 1981, §§ 21-501 to 21-592. In re Rosell, 547 A.2d 180, 1988 D.C. App. LEXIS 146 (1988).

Fact that one physician's application for emergency hospitalization of plaintiff on ground of mental illness was invalid as not being based on examination of plaintiff within 72 hours of its preparation did not require trial

court to reconsider its determination of probable cause to detain plaintiff, where such determination had also been based on separate and valid information from different physician, and plaintiff had waived his right to probable cause hearing in which defect could have been corrected. D.C. Code 1981, §§ 21-523, 21-525. In re Morris, 482 A.2d 369, 1984 D.C. App. LEXIS 480 (1984).

Qualification of petitioner—Physician-petitioner.

For purposes of Hospitalization of the Mentally Ill Act, "physician", who may file an application for emergency hospitalization, is someone who acts as more than mere member of medical profession and must possess patient-oriented role identification. D.C. Code 1981, §§ 21-501, 21-592. In re Rosell, 547 A.2d 180, 1988 D.C. App. LEXIS 146 (1988).

— Personal examination of committee, qualification of petitioner.

Defects in application form for emergency observation and diagnosis of person believed to be mentally ill did not mandate immediate release, even if physician's application was not based on "personal observation and examination"; application reflected genuine personal involvement in process; moreover, trial court heard three separate witnesses and ample grounds existed for conclusion apart from application form itself. D.C. Code 1981, §§ 21-524, 21-525, 21-582(a, b). In re Herman, 619 A.2d 958, 1993 D.C. App. LEXIS 21 (1993).

Initial emergency detention of plaintiff, based on physician's application for emergency hospitalization on ground of mental illness which was invalid as not being based on examination of plaintiff within 72 hours of its preparation, was null and void, and hospital at which plaintiff had been detained was properly ordered to correct its records to so indicate. D.C. Code 1981, § 21-521. In re Morris, 482 A.2d 369, 1984 D.C. App. LEXIS 480 (1984).

In process of petitioning for involuntary commitment of individual, hospital superintendent was not, merely by virtue of being physician himself, required to personally conduct examination of individual within 72 hours prior to making petition; petition, accompanied by certificate of physician who actually did conduct examination, was sufficient under statutes. D.C. Code 1981, §§ 21-501, 21-521 to 21-523, 21-524(b), 21-541(a), (a)(1), (a)(2)(A), 21-582(a, b). Dobbs v. Duncan, 458 A.2d 719, 1983 D.C. App. LEXIS 344 (1983).

§ 21-583. Physicians, psychiatrists and qualified psychologists as witnesses.

A physician, psychiatrist or qualified psychologist making application or conducting an examination under this chapter is a competent and compellable witness at any trial, hearing or other proceeding conducted pursuant to this chapter and the physician- or psychologist-patient privilege is not applicable.

(Sept. 14, 1965, 79 Stat. 760, Pub. L. 89-183, § 1; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(19), 30 DCR 5778.)

Prior Codifications. — 1981 Ed., § 21-583. 1973 Ed., § 21-583.

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 21-501.

CASE NOTES

In general.

In civil commitment case, permitting expert to testify as to his reexamination of respondent following the statutorily prescribed examination did not violate respondent's rights. D.C. Code 1981, § 21-501 et seq. In re Morrow, 463 A.2d 689, 1983 D.C. App. LEXIS 421 (1983).

§ 21-584. Witness fees.

Witnesses subpoenaed under the provisions of this chapter shall be paid the same fees and mileage as are paid to other witnesses in the court.

(Sept. 14, 1965, 79 Stat. 760, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567,

Pub. L. 91-358, title I, § 150(c)(6); Mar. 24, 1998, D.C. Law 12-81, § 14(l), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 21-584. 1973 Ed., § 21-584.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-546.

CASE NOTES

Indigents.

Respondent in civil commitment case is entitled to services of psychiatric expert upon a showing of financial inability to obtain the expert and the demonstration that the service is necessary to an adequate defense; deference must be given to judgment of counsel, but that does not prevent trial court from exercising its discretion. D.C. Code 1981, § 11-2605(a, c). In re Morrow, 463 A.2d 689, 1983 D.C. App. LEXIS 421 (1983).

In civil commitment case, trial court appropriately denies a request for services of psychiatric expert when respondent has received adequate psychiatric assistance from other sources. D.C. Code 1981, § 11-2605(a, c). In re Morrow, 463 A.2d 689, 1983 D.C. App. LEXIS 421 (1983).

In civil commitment case, trial court did not abuse its discretion in failing to authorize payment for a second psychiatric expert until the day of trial, because neither counsel's oral argument nor his memorandum in support thereof provided compelling justification for the second expert, counsel sought to introduce expert's theory of dangerousness and not his personal observation of respondent, and trial court ultimately granted respondent's mid-trial motion to authorize payment for expert testimony. D.C. Code 1981, § 11-2605(a, c). In re Morrow, 463 A.2d 689, 1983 D.C. App. LEXIS 421 (1983).

§ 21-585. Confinement in jail prohibited.

A person apprehended, detained, or hospitalized under any provision of this chapter may not be confined in jail or in a penal or correctional institution.

(Sept. 14, 1965, 79 Stat. 760, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-585. 1973 Ed., § 21-585.

CASE NOTES

ANALYSIS

Judicial review.
Least restrictive conditions of confinement.

Judicial review.

The facts about John Howard (maximum security) Pavilion in Saint Elizabeths Hospital were not peculiarly within knowledge of hospital, and were properly part of case of one who had been civilly committed to hospital and who was seeking by way of habeas corpus transfer from the pavilion to some less restricted ward; on remand the petitioner could develop those facts, and hospital should canvass less restrictive alternatives and, finding none, should consider effect of such extreme deprivations on petitioner's treatment. Covington v. Harris, 419 F.2d 617, 1969 U.S. App. LEXIS 13253 (C.A.D.C. 1969).

Before a court can determine that hospital's decision to confine patient in maximum security ward is, within its broad discretion, permissible and reasonable in view of the relevant information, it must be able to conclude that hospital has considered and found inadequate all relevant alternative dispositions within hospital. D.C. Code §§ 21-501 to 21-591. Covington v. Harris, 419 F.2d 617, 1969 U.S. App. LEXIS 13253 (C.A.D.C. 1969).

Where record in habeas corpus case did not indicate that decision of Saint Elizabeths Hospital that petitioner be confined in John Howard (maximum security) Pavilion was made in view of the relevant information, case was remanded to district court for further proceedings to expand the record and to make findings of fact. Covington v. Harris, 419 F.2d 617, 1969 U.S. App. LEXIS 13253 (C.A.D.C. 1969).

Least restrictive conditions of confinement.

The principle of the least restrictive alternative consistent with legitimate purposes of commitment to hospital inheres in the very nature of civil commitment, which entails an extraor-

dinary deprivation of liberty justifiable only when the respondent is mentally ill to the extent that he is likely to injure himself or other persons if allowed to remain at liberty. D.C. Code § 21-544. Covington v. Harris, 419 F.2d 617, 1969 U.S. App. LEXIS 13253 (C.A.D.C. 1969).

The principle of the least restrictive alternative is equally applicable to alternative dispositions within a mental hospital. D.C. Code §§ 21-501 to 21-591. Covington v. Harris, 419 F.2d 617, 1969 U.S. App. LEXIS 13253 (C.A.D.C. 1969).

Efficient hospital administration requires courts to accord administrators much broader discretion in determining appropriateness of an inter-hospital disposition of mentally ill person than in assaying the need for hospitalization ab initio; however, additional restrictions beyond those necessarily entailed by hospitalization are as much in need of justification as any other deprivations of liberty; judicial review of internal decisions is not precluded. D.C. Code §§ 21-501 to 21-591. Covington v. Harris, 419 F.2d 617, 1969 U.S. App. LEXIS 13253 (C.A.D.C. 1969).

§ 21-586. Financial responsibility for care of hospitalized persons; judicial enforcement.

(a) The father, mother, husband, wife, and adult children of a mentally ill person, if of sufficient ability, and the estate of the mentally ill person, if the estate is sufficient for the purpose, shall pay the cost to the District of Columbia of the mentally ill person's maintenance, including treatment, in a hospital in which the person is hospitalized under this chapter. The Commission on Mental Health shall examine, under oath, the father, mother, husband, wife, and adult children of an alleged mentally ill person whenever those relatives live within the District of Columbia, and ascertain their ability or the ability of the estate to maintain or contribute toward the maintenance of the mentally ill person. The relatives or estate may not be required to pay more than the actual cost to the District of Columbia of maintenance of the alleged mentally ill person.

(b) If a person made liable by subsection (a) of this section for the maintenance of a mentally ill person fails so to provide or pay for the maintenance, the court shall issue to him a citation to show cause why he should not be adjudged to pay a portion or all of the expenses of maintenance of the patient. The citation shall be served at least 10 days before the hearing thereon. If, upon the hearing, it appears to the court that the mentally ill person has not sufficient estate out of which his maintenance may properly be fully met and that he has relatives of the degree referred to in subsection (a) of this section who are parties to the proceedings, and who are able to contribute thereto, the court may make an order requiring payment by the relatives of such sums as it finds that they are reasonably able to pay and as may be necessary to provide for the maintenance and treatment of the mentally ill person. The order shall require the payment of the sums to the District of Columbia treasurer annually, semiannually, quarterly, or monthly as the court directs. The treasurer shall collect the sums due under this section, and turn them into the Treasury of the United States to the credit of the District of Columbia. The order may be enforced against any property of the mentally ill person or of the person liable or undertaking to maintain him in the same way as if it were an order for temporary alimony in a divorce case.

(c) For purposes of this section only, the term "mentally ill person" means a person who has a mental illness, but does not include a person committed to a

private or public hospital in the District of Columbia by order of the court in a criminal proceeding.

(Sept. 14, 1965, 79 Stat. 760, Pub. L. 89-183, § 1; Apr. 4, 2003, D.C. Law 14-283, § 2(ff), 50 DCR 917.)

Cross references. — Mental health information disclosures to meet financial responsibility or compulsory reporting requirements, see § 7-1203.02.

Prior Codifications. — 1981 Ed., § 21-586. 1973 Ed., § 21-586.

Effect of amendments. — D.C. Law 14-283 added subsec. (c).

Temporary Amendment of Section. — Section 2(ee) of D.C. Law 14-131 added subsec. (c) to read as follows:

"(c) For purposes of this section only, the term 'mentally ill person' means a person who has a mental illness, but does not include a person committed to a private or public hospital in the District of Columbia by order of the court in a criminal proceeding."

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(ee) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(ee) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(ff) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) amendment of section, see § 2(ff) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

Editor's notes. — Law 17-358 amended this section subject to congressional enactment.

CASE NOTES

ANALYSIS

Accrual of liability.
Care outside District.
Construction and application.
Construction with other statutes.
Equitable estoppel.
Federal institutionalization.
Financial ability of family member, generally.
Jurisdiction.
Liability of estate of committee.
Limitation of actions.
Parental liability.
Show cause.
Validity of related laws.
Veteran committees.

Accrual of liability.

Father's liability for portion of cost of maintenance of mental incompetent in public hospital commenced as of date on which authorities demanded contribution from him. D.C. Code 1961, § 21-318. Beach v. Government of District of Columbia, 320 F.2d 790, 1963 U.S. App. LEXIS 4714 (C.A.D.C. 1963), writ of certiorari denied by 375 U.S. 943, 84 S. Ct. 351, 11 L. Ed. 2d 274, 1963 U.S. LEXIS 94 (1963).

Care outside District.

Superior Court had authority under the Ervin Act to order District of Columbia to pay for civil committee's care outside of District. D.C. Code 1981, §§ 21-501, 21-511 to 21-513, 21-545(b), 21-586. In re Myrick, 624 A.2d 1222, 1993 D.C. App. LEXIS 125 (1993).

Construction and application.

District of Columbia statute governing liability of father for cost of maintenance and treatment of insane child creates liability which is not limited to father living in District. D.C. Code 1961, § 21-318. Beach v. Government of District of Columbia, 320 F.2d 790, 1963 U.S. App. LEXIS 4714 (C.A.D.C. 1963), writ of certiorari denied by 375 U.S. 943, 84 S. Ct. 351, 11 L. Ed. 2d 274, 1963 U.S. LEXIS 94 (1963).

Since District of Columbia's right to reimbursement for treatment of persons involuntarily confined to a public hospital for the mentally ill arises solely by statute and is in derogation of common-law rules, such right is to be extended no further than necessary to permit those claims for recompense which are either specifically set out in the enabling provision or are fairly inferrable from its language in the natural course of interpretation. D.C. Code § 21-586. District of Columbia v. H.J.B., 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Construction with other statutes.

Regardless of fact that proceeding involving involuntary commitment of mentally retarded

child was not brought under authority of child neglect statute, such statute furnished no ground for charging charitable organization, which had arranged for child's adoption, with cost of her commitment since statute governing right of District of Columbia to reimbursement is controlling where neglect proceedings are suspended because of incompetency of the child and such statute did not provide a claim for reimbursement against the organization. D.C. Code §§ 16-2301 et seq., 16-2315, 21-586. District of Columbia v. H.J.B., 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Equitable estoppel.

Where only by default on collapse of the adoption did custody of mentally retarded child, who was brought to the United States for purposes of adoption, fall to the charitable committee which had arranged for the adoption, custody had been maintained because of inability to locate a permanent arrangement because of the severe infirmity and committee had not been a penurious provider during its custodianship, doctrine of equitable estoppel furnished no basis for claim of reimbursement against committee for maintenance of child during involuntary commitment to District of Columbia hospital for the mentally ill. D.C. Code § 21-586. District of Columbia v. H.J.B., 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Since estate of a mentally ill person is statutorily obligated in District of Columbia to pay full cost of his care and maintenance if it is sufficient to do so, and since decedent's estate was sufficient to pay for his care, hospital employee was without authority to relieve decedent or his estate from this obligation imposed by law, and District of Columbia could not be estopped from bringing an action for reimbursement by virtue of conduct of employee in purporting to contract to accept a lesser amount in satisfaction of obligation. D.C. Code § 21-586(a). District of Columbia v. Stewart, 278 A.2d 117, 1971 D.C. App. LEXIS 338 (1971).

Federal institutionalization.

Asserted fiduciary relationship of hospital and patient did not place a common-law duty upon federal institution in District of Columbia to advise indigent patient on financial advantages and disadvantages of his treatment at institution. D.C. Code §§ 21-586, 32-401, 32-405. District of Columbia v. Moxley, 471 F. Supp. 777, 1979 U.S. Dist. LEXIS 12753 (1979).

Federal institution could not be held liable for costs of care and treatment of deceased indigent on ground that it voluntarily undertook to advise indigent on financial matters and then abandoned its effort in absence of evidence that hospital, by inquiring into indigent's financial situation, either increased risk of harm to him or induced his reliance on its undertaking. D.C. Code §§ 21-586, 32-401, 32-405. District of Columbia v. Moxley, 471 F. Supp. 777, 1979 U.S. Dist. LEXIS 12753 (1979).

If there was any duty to bill decedent or others for costs of his care and treatment at a federal hospital paid by the District during his confinement there, duty necessarily rested with the District of Columbia and not with the institution. D.C. Code §§ 21-586, 32-401, 32-405. District of Columbia v. Moxley, 471 F. Supp. 777, 1979 U.S. Dist. LEXIS 12753 (1979).

At the commitment stage and for those patients determined to be in need of only custodial care, completely independent from any care or treatment generated by federally administered mental institution located in the District of Columbia, the primary responsibility for providing alternative facilities is upon the district government. D.C. Code § 21-501 et seq. Dixon v. Weinberger, 405 F. Supp. 974, 1975 U.S. Dist. LEXIS 14644 (1975).

Financial ability of family member, generally.

A determination by the District of Columbia Mental Health Commission of ability of relative to pay expenses for maintenance of committed mentally ill person is not a prerequisite to relative's liability for those expenses. D.C. Code 1961,§ 21-586; Act Sept. 14, 1965, §§ 4, 8, 79 Stat. 779. Harris v. District of Columbia, 357 F.2d 593, 1966 U.S. App. LEXIS 6981 (C.A.D.C. 1966).

Liability of relative of a mentally ill person for past maintenance expenses is not subject to a hard and fast rule, but is to be resolved according to the equities. D.C. Code 1961, § 21-586; Act Sept. 14, 1965, §§ 4, 8, 79 Stat. 779. Harris v. District of Columbia, 357 F.2d 593, 1966 U.S. App. LEXIS 6981 (C.A.D.C. 1966).

An order requiring relative to pay past expenses for maintenance of mentally ill person is not limited to those cases where relative was able to pay the amount at the time the expenses were incurred, and if obligation cannot be satisfied at time it arises, equity and statute demand that it be satisfied when and if relative becomes of sufficient ability. D.C. Code 1961, § 21-586; Act Sept. 14, 1965, §§ 4, 8, 79 Stat. 779. Harris v. District of Columbia, 357 F.2d 593, 1966 U.S. App. LEXIS 6981 (C.A.D.C. 1966).

Jurisdiction.

Where United States district court ordered wife committed to mental hospital, jurisdiction over any claim for contribution to her support remained in United States district court while she was confined in hospital, but after she was released and placed in foster home, claim for contribution to her support was to be brought in

superior court. D.C. Code §§ 3-218(c), 21-586. Randolph v. District of Columbia, 333 A.2d 380, 1975 D.C. App. LEXIS 333 (1975).

Liability of estate of committee.

Under 1939 act providing for commitment of insane person and that committee of such person, if estate is sufficient for purpose, shall pay cost to District of Columbia for maintenance, and that, if it appears that insane person has not sufficient estate out of which his maintenance may "properly" be fully met, then court may order payment by relatives of such sum necessary to provide for maintenance, the word "properly" does not refer to adequacy of estate after making allowance for support of dependents, but refers to general equity power of court to make such orders and decrees for management and preservation of insane person's estate as to court may seem proper, and hence act does not give authority to fix payments by committee at less than full cost of care where funds of estate are adequate. D.C. Code 1940, §§ 21-301, 21-318. District of Columbia v. Graves, 104 F.Supp. 538, 1952 U.S. Dist. LEXIS 4350 (D.D.C1952).

Where insane person was committed to hospital and committee appointed of his person and estate, and committee was ordered to pay certain sum to District of Columbia for hospital care, which sum was less than actual cost because of need of support of insane person's wife, upon insane person's death, estate was liable for portion of cost of care for which District had not been reimbursed, and in rendering judgment for unpaid balance District Court had no authority to consider need of deceased insane person's dependents for support. D.C. Code 1940, § 21-318. District of Columbia v. Graves, 104 F.Supp. 538, 1952 U.S. Dist. LEXIS 4350 (D.D.C1952).

In committing insane person to hospital and appointing committee of his person and estate and in fixing amount of payments to District of Columbia on account of cost of care of insane person to be made out of insane person's estate, there is no authority to consider support of dependents. D.C. Code 1940, §§ 21-318, 21-319. District of Columbia v. Graves, 104 F.Supp. 538, 1952 U.S. Dist. LEXIS 4350 (D.D.C1952).

Where insane person was committed to hospital and committee was appointed of person and estate, and committee was ordered to pay certain sum, less than actual cost, to District of Columbia for hospital care, upon death of insane person, even if estate were inadequate to satisfy entire amount of balance of cost of care, District would be entitled to judgment for entire balance and to be paid its pro rata share out of proceeds of estate on same basis as any other creditor. D.C. Code 1940, §§ 21-307, 21-318, 21-319. District of Columbia v. Graves, 104 F.Supp. 538, 1952 U.S. Dist. LEXIS 4350 (D.D.C1952).

Estate of patient committed to hospital while resident of District of Columbia was liable to District of Columbia for her maintenance. D.C. Code 1961, § 21-586. Cullen v. District of Columbia, 221 A.2d 914, 1966 D.C. App. LEXIS 209 (App. 1966).

Limitation of actions.

District of Columbia, which waited five years beyond expiration of three-year statute of limitations which would have barred action against patient if she had been personally sued for cost of hospitalization, was not barred by statute of limitations from recovering such cost in action against patient's estate. D.C. Code 1961, §§ 12-301, 21-586. Cullen v. District of Columbia, 221 A.2d 914, 1966 D.C. App. LEXIS 209 (App. 1966).

Parental liability.

It was not inequitable to charge estate of incompetent mother, who had participated in proceedings for commitment of her mentally ill child which had resulted in an order requiring monthly payments of $30, for expenses incurred above amount paid in maintaining child in institution for the past 17 years, where conservator of mother's estate did not contend judgment for that amount was unreasonable or beyond the means of the estate. D.C. Code 1961, § 21-586; Act Sept. 14, 1965, §§ 4, 8, 79 Stat. 779. Harris v. District of Columbia, 357 F.2d 593, 1966 U.S. App. LEXIS 6981 (C.A.D.C. 1966).

Evidence supported finding that father of mental incompetent was financially able to pay $75 per month toward cost of maintenance and treatment of incompetent in public hospital. D.C. Code 1961, § 21-318. Beach v. Government of District of Columbia, 320 F.2d 790, 1963 U.S. App. LEXIS 4714 (C.A.D.C. 1963), writ of certiorari denied by 375 U.S. 943, 84 S. Ct. 351, 11 L. Ed. 2d 274, 1963 U.S. LEXIS 94 (1963).

General rule is that a parent's legal duty to support a child terminates when the child reaches majority; a statutory exception exists in case of a mentally ill child who is hospitalized after he turns 21. D.C. Code § 21-586. Nelson v. Nelson, 379 A.2d 713, 1977 D.C. App. LEXIS 263 (1977).

Grant to a child-placing agency of parental rights, as opposed to parental duties, is primarily for purpose of vesting agency with authority to consent to adoption and does not, of its own force, expand schedule of liabilities in statute governing District of Columbia's right to reimbursement for treatment of persons involuntarily confined to a public hospital for the mentally ill, at least where the agency has acquired its most recent custodial relation by

default of an adoption proceeding outside the District and has been unable to find an alternative placement because of a disability unknown at time when the child was released to the preadoptive family. D.C. Code §§ 21-586, 32-786. District of Columbia v. H.J.B., 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Father is not legally required to support and educate adult child, except as specified by statute where child is in need of public assistance or is hospitalized because of mental illness. D.C. Code §§ 3-218, 11-1141, 21-586. Spence v. Spence, 266 A.2d 29, 1970 D.C. App. LEXIS 296 (App. 1970).

Show cause.

The reference in District of Columbia Mental Health Statute for issuance of citations to show cause to persons "hereinabove made liable" for expenses and maintenance of mentally ill person does not refer merely to persons found by Commission to be able to pay, but refers to first clause stating that certain close relatives as well as committee or guardian of ward's estate must pay maintenance expenses if able. D.C. Code 1961, § 21-586; Act Sept. 14, 1965, §§ 4, 8, 79 Stat. 779. Harris v. District of Columbia, 357 F.2d 593, 1966 U.S. App. LEXIS 6981 (C.A.D.C. 1966).

Validity of related laws.

Statute governing liability of father for cost of maintenance and treatment of insane child is not violative of due process. D.C. Code 1961, § 21-318. Beach v. Government of District of Columbia, 320 F.2d 790, 1963 U.S. App. LEXIS 4714 (C.A.D.C. 1963), writ of certiorari denied by 375 U.S. 943, 84 S. Ct. 351, 11 L. Ed. 2d 274, 1963 U.S. LEXIS 94 (1963).

Veteran committees.

District of Columbia was entitled to reimbursement for expenses of treatment of incompetent veteran from committee of the veteran from date of her appointment until the veteran was transferred to the rolls of the Veterans Administration which now bears the costs involved, since the District was a voluntary "creditor" within the statute exempting from claims of "creditors" payments of benefits due or to become due under any law administered by the Veterans Administration. 38 U.S.C. § 3101; D.C. Code 1951, §§ 21-315, 21-318, 32-401 to 32-417g. Savoid v. District of Columbia, 288 F.2d 851, 1961 U.S. App. LEXIS 5259 (C.A.D.C. 1961).

District of Columbia could not recover, out of funds paid by Veterans' Administration to committee of veteran, for payments made to hospital for veteran's maintenance and treatment prior to appointment of committee for veteran. 38 U.S.C. § 454a; D.C. Code 1951, §§ 21-307, 21-318. District of Columbia v. Reilly, 249 F.2d 524, 1957 U.S. App. LEXIS 4034 (C.A.D.C. 1957).

Administrator of decedent's estate, sued by District of Columbia for cost of care and treatment of decedent at federal institution, had no cause of action on third-party indemnity claim against superintendent of institution, where institution had no legal duty to and, hence, was not liable to estate for failing to advise decedent that he could receive same care and treatment at a Veterans Administration or military facility without expense. D.C. Code §§ 21-586, 32-401, 32-405. District of Columbia v. Moxley, 471 F. Supp. 777, 1979 U.S. Dist. LEXIS 12753 (1979).

Statute placing responsibility on the District of Columbia to pay for the care and treatment of its residents who were mentally ill and indigent did not place a duty on the federal institution where the indigent was placed to transfer the indigent to a Veterans Administration or military facility. D.C. Code §§ 21-586, 32-401, 32-405. District of Columbia v. Moxley, 471 F. Supp. 777, 1979 U.S. Dist. LEXIS 12753 (1979).

§ 21-587. Veterans' Administration and military hospital facilities.

This chapter does not require the admission of a person to a Veterans' Administration or military hospital facility unless the person is otherwise eligible for care and treatment in the facility.

(Sept. 14, 1965, 79 Stat. 760, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-587. 1973 Ed., § 21-587.

CASE NOTES

In general.

If there was any duty to bill decedent or others for costs of his care and treatment at a federal hospital paid by the District during his

confinement there, duty necessarily rested with the District of Columbia and not with the institution. D.C. Code §§ 21-586, 32-401, 32-405. District of Columbia v. Moxley, 471 F. Supp. 777, 1979 U.S. Dist. LEXIS 12753 (1979).

Statute placing responsibility on the District of Columbia to pay for the care and treatment of its residents who were mentally ill and indigent did not place a duty on the federal institution where the indigent was placed to transfer the indigent to a Veterans Administration or military facility. D.C. Code §§ 21-586, 32-401, 32-405. District of Columbia v. Moxley, 471 F. Supp. 777, 1979 U.S. Dist. LEXIS 12753 (1979).

Asserted fiduciary relationship of hospital and patient did not place a common-law duty upon federal institution in District of Columbia to advise indigent patient on financial advantages and disadvantages of his treatment at institution. D.C. Code §§ 21-586, 32-401, 32-405. District of Columbia v. Moxley, 471 F. Supp. 777, 1979 U.S. Dist. LEXIS 12753 (1979).

§ 21-588. Forms.

All applications and certificates for the hospitalization of a person in the District of Columbia under this chapter shall be made on forms approved by the Commission on Mental Health and furnished by it.

(Sept. 14, 1965, 79 Stat. 760, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-588. 1973 Ed., § 21-588.

§ 21-589. Persons hospitalized prior to September 15, 1964.

(a) Subject to subsection (b) of this section, the provisions of sections 21-546 to 21-551, subchapter V of this chapter and sections 21-585 and 21-588 apply to a person, who, on or after January 1, 1966, is a patient in a hospital in the District of Columbia by reason of having been declared insane or of unsound mind pursuant to a court order entered in a noncriminal proceeding prior to September 15, 1964.

(b) A request made by a patient referred to in subsection (a) of this section for an examination authorized by section 21-546 may be made on April 15, 1966, by the patient, or his attorney, legal guardian, spouse, parent, or other nearest adult relative, and not more frequently than every six months thereafter.

(Sept. 14, 1965, 79 Stat. 761, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-589. 1973 Ed., § 21-589.

CASE NOTES

In general.

Interest of justice and furtherance of congressional objective required application, to pending habeas corpus proceeding by petitioner confined in Saint Elizabeths Hospital in District of Columbia as insane person, of principles adopted in District of Columbia Hospitalization of Mentally Ill Act passed after commitment. D.C. Code 1961, §§ 21-501 to 21-591. Lake v. Cameron, 364 F.2d 657, 1966 U.S. App. LEXIS 6103 (C.A.D.C. 1966), writ of certiorari denied by 382 U.S. 863, 86 S. Ct. 126, 15 L. Ed. 2d 100, 1965 U.S. LEXIS 875 (1965).

§ 21-589.01. Interim provisions for term of commitment.

(a) The commitment of a person committed under section 21-545 for an

indeterminate period of time shall expire 548 days after December 10, 2004, unless the chief clinical officer of the Department, facility, hospital, or mental health provider has petitioned for recommitment of the person.

(b) A petition for recommitment under this section shall be subject to the provisions for a petition for renewal of commitment brought under section 21-545.01 unless the provision is inconsistent with this section.

(c) A petition for recommitment may be filed at any time during the 548-day period, but not later than 60 days prior to the expiration of the 548-day period. For good cause shown, a petition for recommitment may be filed within the last 60 days of the 548-day period.

(d) If a petition for recommitment is pending at the expiration of the 548-day period, the period of commitment shall be extended pending resolution of the petition.

(e) This section shall apply as of July 20, 2005.

(Apr. 4, 2003, D.C. Law 14-283, § 2(gg), 50 DCR 917; Mar. 8, 2007, D.C. Law 16-235, § 2(b), 54 DCR 389.)

Effect of amendments. — D.C. Law 16-235 rewrote the section which had previously read as follows: "Any person committed for an indeterminate period of time pursuant to section 21-545 prior to January 1, 2003 shall have his commitment terminate no more than 18 months from January 1, 2003 unless the chief clinical officer of the Department, facility, hospital, or mental health provider has petitioned for recommitment under section 21-545.01. The petition for recommitment of those persons who were committed for an indeterminate period of time prior to January 1, 2003 may be filed at any time during the 18-month period, but no later than 60 days prior to the expiration of the period."

Temporary Amendment of Section. — Section 2(b) of D.C. Law 15-199 rewrote the section to read as follows: "§ 21-589.01. Interim provisions for term of commitment.

"(a) The commitment of a person committed under section 21-545 for an indeterminate period of time shall expire 548 days after the effective date of the federal law enacting section 2(d), (e), (l)(2), (r)(3) and (4), (t), and (u) of the Mental Health Civil Commitment Act of 2002, effective April 4, 2003 (D.C. Law 14-283; 50 DCR 917), unless the chief clinical officer of the Department, facility, hospital, or mental health provider has petitioned for recommitment of the person.

"(b) A petition for recommitment under this section shall be subject to the provisions for a petition for renewal of commitment brought under section 21-545.01 unless the provision is inconsistent with this section.

"(c) A petition for recommitment may be filed at any time during the 548-day period, but not later than 60 days prior to the expiration of the 548-day period. For good cause shown, a petition for recommitment may be filed within the last 60 days of the 548-day period.

"(d) If a petition for recommitment is pending at the expiration of the 548-day period, the period of commitment shall be extended pending resolution of the petition."

Section 4(b) of D.C. Law 15-199 provided that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 16-182 amended this section to read as follows: "§ 21-589.01. Interim provisions for term of commitment.

"(a) The commitment of a person committed under section 21-545 for an indeterminate period of time shall expire 548 days after December 10, 2004, unless the chief clinical officer of the Department, facility, hospital, or mental health provider has petitioned for recommitment of the person.

"(b) A petition for recommitment under this section shall be subject to the provisions for a petition for renewal of commitment brought under section 21-545.01, unless the provision is inconsistent with this section.

"(c) A petition for recommitment may be filed at any time during the 548-day period, but not later than 60 days prior to the expiration of the 548-day period. For good cause shown, a petition for recommitment may be filed within the last 60 days of the 548-day period.

"(d) If a petition for recommitment is pending at the expiration of the 548-day period, the period of commitment shall be extended pending resolution of the petition.

"(e) This section shall apply as of July 20, 2005."

Section 4(b) of D.C. Law 16-182 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition of § 21-589.01, see § 2(gg) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) addition of § 21-589.01, see § 2(gg) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

For temporary (90 day) amendment of section, see § 2(b) of Mental Health Civil Commitment Extension Emergency Act of 2004 (D.C. Act 15-450, June 23, 2004, 51 DCR 6717).

For temporary (90 day) amendment of section, see § 2(b) of Mental Health Civil Commitment Extension Congressional Review Emergency Act of 2004 (D.C. Act 15-526, August 2, 2004, 51 DCR 9140).

For temporary (90 day) amendment of section, see § 2(b) of Mental Health Civil Commitment Extension Second Congressional Review Emergency Act of 2004 (D.C. Act 15-557, October 26, 2004, 51 DCR 10372).

For temporary (90 day) amendment of section, see § 2(b) of Mental Health Civil Commitment Extension Emergency Act of 2006 (D.C. Act 16-390, June 14, 2006, 53 DCR 4887).

For temporary (90 day) amendment of section, see § 2(b) of Mental Health Civil Commitment Extension Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-478, September 23, 2006, 53 DCR 7936).

Legislative history of Law 14-283. — For Law 14-283, see notes following § 21-501.

Legislative history of Law 15-199. — Law 15-199, the "Mental Health Civil Commitment Extension Temporary Act of 2004", was introduced in Council and assigned Bill No. 15-856, and was retained by Council. The Bill was adopted on first and second readings on June 1, 2004, and June 29, 2004, respectively. Signed by the Mayor on July 19, 2004, it was assigned Act No. 15-473 and transmitted to both Houses of Congress for its review. D.C. Law 15-199 became effective on December 7, 2004.

Legislative history of Law 16-235. — Law 16-235, the "Mental Health Civil Commitment Extension Act of 2006", was introduced in Council and assigned Bill No. 16-778, which was referred to Committee on Human Services. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28 2006, it was assigned Act No. 16-591 and transmitted to both Houses of Congress for its review. D.C. Law 16-235 became effective on March 8, 2007.

References in text. — Section 21-545.01, referred to in text, is enacted only upon enactment of certain legislation by the United States Congress.

§ 21-590. Discharge as cured; restoration to legal status. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 761, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 567, Pub. L. 91-358, title I, § 150(c)(3); Apr. 4, 2003, D.C. Law 14-283, § 2(hh), 50 DCR 917.)

Prior Codifications. — 1981 Ed., § 21-590. 1973 Ed., § 21-590.

Temporary Amendment of Section. — Section 2(ff) of D.C. Law 14-131 amended this section to read as follows: "§ 21-590. Persons committed prior to the effective date the Mental Health Commitment Temporary Act of 2002. Any person committed for an indeterminate period of time pursuant to section 21-545 prior to the effective date of the Mental Health Commitment Temporary Act of 2002, passed on 2nd reading on February 5, 2002 (Enrolled version of Bill 14-502), shall have his commitment terminate no more than 18 months from the effective date of the Mental Health Commitment Temporary act of 2002 unless the chief clinical officer of the Department, facility, hospital, or mental health provider has petitioned for recommitment under section 21-545.01. The petition for recommitment of those persons who were committed prior to the effective date of the Mental Health Commitment Temporary Act of 2002 may be filed at any time during the 18-month period, but no later than 60 days prior to the expiration of the period."

Section 5(b) of D.C. Law 14-131 provided that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 14-187 amended this section to read as follows: "§ 21-590. Interim provisions for term of commitment. Any person committed for an indeterminate period of time pursuant to section 21-545 shall have his commitment terminate no more than 18 months from January 30, 2002 unless the chief clinical officer of the Department, facility, hospital, or mental health provider has petitioned for recommitment under section 21-545.01. The petition for recommitment of those persons who were committed for an indeterminate period of

time pursuant to section 21-545 may be filed at any time during the 18-month period, but no later than 60 days prior to the expiration of the period."

Section 4(b) of D.C. Law 14-187 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(ff) of Mental Health Commitment Emergency Amendment Act of 2002 (D.C. Act 14-265, January 30, 2002, 49 DCR 1450).

For temporary (90 day) amendment of section, see § 2(ff) of Mental Health Commitment Congressional Review Emergency Act of 2002 (D.C. Act 14-350, April 24, 2002, 49 DCR 4417).

For temporary (90 day) amendment of section, see § 2(b) of Mental Health Commitment Clarification Emergency Act of 2002 (D.C. Act 14-363, May 20, 2002, 49 DCR 5070).

For temporary (90 day) amendment of section, see § 2(b) of Mental Health Commitment Clarification Congressional Review Emergency Act of 2002 (D.C. Act 14-416, July 17, 2002, 49 DCR 7385).

For temporary (90 day) repeal of section, see § 2(hh) of Mental Health Civil Commitment Emergency Act of 2002 (D.C. Act 14-546, December 12, 2002, 50 DCR 199).

For temporary (90 day) repeal of section, see § 2(hh) of Mental Health Civil Commitment Congressional Review Emergency Act of 2003 (D.C. Act 15-41, March 24, 2003, 50 DCR 2784).

Legislative history of Law 14-131. — For Law 14-131, see notes following § 21-501.

Legislative history of Law 14-187. — Law 14-187, the "Mental Health Commitment Clarification Temporary Act of 2002", was introduced in Council and assigned Bill No. 14-664, and was retained by Council. The Bill was adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by the Mayor on June 21, 2002, it was assigned Act No. 14-389 and transmitted to both Houses of Congress for its review. D.C. Law 14-187 became effective on October 1, 2002.

CASE NOTES

In general.

Where petitioner has been committed to public mental hospital in District of Columbia in 1958 and after petitioner had left without permission an entry was made in hospital records showing that petitioner was discharged as "improved," petitioner could not four years later be recommitted, under the prior order without a further hearing on ground that petitioner had not been legally restored. D.C. Code 1961, §§ 21-315, 21-320; 24 U.S.C. § 210. Gillis v. Cameron, 324 F.2d 419, 1963 U.S. App. LEXIS 4078 (C.A.D.C. 1963).

§ 21-591. Offenses and penalties.

Whoever:

(1) without probable cause for believing a person to be mentally ill:

(A) causes or conspires with or assists another person to cause the hospitalization, under this chapter, of the person first referred to; or

(B) executes a petition, application, or certificate pursuant to this chapter, by which he secures or attempts to secure the apprehension, hospitalization, detention, or restraint of the person first referred to;

or

(2) causes or conspires with or assists another person to cause the denial to a person of a right accorded to him by this chapter;

or

(3) being a physician, psychiatrist or qualified psychologist, knowingly makes a false certificate or application pursuant to this chapter as to the mental condition of a person —

shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(Sept. 14, 1965, 79 Stat. 761, Pub. L. 89-183, § 1; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(20), 30 DCR 5778.)

Prior Codifications. — 1981 Ed., § 21-591. 1973 Ed., § 21-591.

Legislative history of Law 5-48. — For legislative history of D.C. Law 5-48, see Historical and Statutory Notes following § 21-501.

§ 21-592. Return to hospital of an escaped mentally ill person.

When a person has been ordered confined in a hospital or institution for the mentally ill pursuant to this chapter and has left such hospital or institution without authorization or has failed to return as directed, the court which ordered confinement shall, upon the request of the administrator of such hospital or institution, order the return of such person to such hospital or institution.

(July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 150(c)(7)(A).)

Cross references. — Fugitives from welfare institutions, reward for apprehension, see § 24-201.27.

Prior Codifications. — 1981 Ed., § 21-592. 1973 Ed., § 21-592.

CASE NOTES

In general.

Patient who, after adjudication that she was of unsound mind, eloped from District of Columbia mental hospital and subsequently recovered mental health, had no right, in seeking restoration to status of person of sound mind, to statutory hearing before Mental Health Commission, or, since she was free, to habeas corpus, but was entitled to discretionary relief within court's inherent power. D.C. Code 1961, §§ 21-320, 21-325. In re DuBois, 207 F.Supp. 909, 1962 U.S. Dist. LEXIS 3722 (D.D.C1962).

Mental health statute, which permitted a court to order a United State Marshal to return a committed patient to a hospital if the patient left the hospital without authorization or failed to return as directed, did not provide a mechanism for returning committed outpatient who refused treatment; statute provided for Marshals to return patients in two specifically defined situations, patient was in an outpatient treatment program and did not required authorization to leave the hospital, and patient had only missed one appointment in the outpatient clinic in 15 months. In re Walker, 856 A.2d 579, 2004 D.C. App. LEXIS 407 (2004).

CHAPTER 7. PROPERTY OF MENTALLY ILL PERSONS. [REPEALED].

Sec.
21-701 to 21-706. [Repealed].

§§ 21-701 to 21-706. Definition; property subject to liens; property subject to executory contract; contract for sale by adult in behalf of himself and mentally ill person; ancillary guardian of nonresident mentally ill person; suits by ancillary guardian. [Repealed].

Repealed.

(Feb. 28, 1987, D.C. Law 6-204, § 3, 34 DCR 632.)

Prior Codifications. — 1981 Ed., §§ 21-701 to 21-706.

CHAPTER 9. PERSONS WITH MENTAL ILLNESS FOUND IN CERTAIN FEDERAL RESERVATIONS.

Sec.
21-901. Definition.
21-902. Commitments by special commissioners of certain district courts.
21-903. Apprehension by certain officials of persons believed to be mentally ill; proceedings.
21-904. Admission upon written application; right of release.
21-905. Superintendent to receive persons committed or apprehended under sections 21-902 and 21-903.
21-906. Examinations; adjudications; laws applicable; expense of care and treatment.
21-907. Transfer of military personnel.
21-908. Care in a Veterans' Administration facility.
21-909. Payment of expenses of transfers.

§ 21-901. Definition.

As used in this chapter, "mentally ill person" has the same meaning as that given to the term by section 21-501.

(Sept. 14, 1965, 79 Stat. 763, Pub. L. 89-183, § 1.)

Cross references. — Superior of the District of Columbia, civil jurisdiction, see § 11-921.

U.S. District Court for the District of Columbia, civil jurisdiction, see § 11-501.

Prior Codifications. — 1981 Ed., § 21-901. 1973 Ed., § 21-901.

CASE NOTES

ANALYSIS

Mentally ill person.
Validity.

Mentally ill person.

To impose civil commitment under Federal Reservation Act, magistrate is required to find probable cause to believe not only that detainee is mentally ill within meaning of the Act, but also that he is likely to injure himself or others if not detained. D.C. Code §§ 21-501, 21-901. Bension v. Meredith, 455 F. Supp. 662, 1978 U.S. Dist. LEXIS 19102 (1978).

Validity.

Fact that Congress has legislated two statutes for detaining mentally ill persons, one applicable to the metropolitan District of Columbia area containing federal reservations and one applicable to the District of Columbia, does not present a constitutionally suspect situation, inasmuch as the District of Columbia is neither a state nor territory, but a federal enclave, housing the federal government, and Congress may legislate a detention statute applicable only within the District. D.C. Code §§ 21-501 et seq., 21-901 et seq.; U.S. Const. Amend. 5. Medynski v. Margolis, 389 F. Supp. 743, 1975 U.S. Dist. LEXIS 14458 (1975).

Provisions of District of Columbia code governing involuntary detention and commitment of mentally ill persons on federal reservations in metropolitan District of Columbia are not so inconsistent with preceding provisions governing commitments in District of Columbia as to deprive an individual of due process and equal protection when committed pursuant to authority of provisions governing federal reservations. D.C. Code §§ 21-501 et seq., 21-901 et seq.; U.S. Const. Amend. 5. Medynski v. Margolis, 389 F. Supp. 743, 1975 U.S. Dist. LEXIS 14458 (1975).

Statutory procedure for involuntary detention and commitment of mentally ill persons in District of Columbia is not violative of due process and equal protection. D.C. Code §§ 21-901 et seq., 21-902; U.S. Const. Amend. 5. Medynski v. Margolis, 389 F. Supp. 743, 1975 U.S. Dist. LEXIS 14458 (1975).

§ 21-902. Commitments by special commissioners of certain district courts.

(a) A United States commissioner specially designated by the United States

District Court for the Eastern District of Virginia or by the United States District Court for the District of Maryland may commit to Saint Elizabeths Hospital, for observation and diagnosis, a person found in a place over which the United States has exclusive or concurrent jurisdiction in Arlington County, Fairfax County, Loudoun County or the city of Alexandria, in the State of Virginia, or in Montgomery County or Prince Georges County in the State of Maryland, who is alleged, and is believed by the commissioner, to be a mentally ill person. A United States commissioner specially designated by the United States District Court for the District of Columbia has like jurisdiction and authority in the case of any person temporarily detained in Saint Elizabeths Hospital, pursuant to section 21-903.

(b) A commitment provided for by subsection (a) of this section shall be for not more than 30 days and may be made only after a hearing before the commissioner upon:

(1) the testimony under oath of at least two witnesses as to their belief that the person is a mentally ill person; and

(2) the testimony under oath or affidavit of two physicians, at least one of whom is skilled in the treatment and diagnosis of nervous and mental disorders, that they have examined the alleged mentally ill person and believe him to be a mentally ill person and not fit to remain at liberty and go unrestrained, and that he should be in custody in a hospital for the treatment of mental or nervous disorders for his own safety and welfare and for the preservation of the peace and good order.

(c) The head of the agency of the United States in control of the place where a person is apprehended for a hearing pursuant to this section shall forthwith notify the spouse or a near relative or friend of the person so apprehended whose address is known to him or can by reasonable inquiry be ascertained by him. In the case of a person described by section 21-907, the agency head shall notify the head of the department having jurisdiction over the service to which the person belongs.

(d) The agency of the United States in control of the place where a person is apprehended for a hearing pursuant to this section may employ physicians for the purpose and pay compensation for their services and pay expenses of witnesses in the proceedings out of funds available therefor. Physicians who are officers or employees of the United States or who are members of the armed forces of the United States may render the services without additional compensation.

(Sept. 14, 1965, 79 Stat. 763, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-902. 1973 Ed., § 21-902.

References in text. — The Act of October 17, 1968, Pub. L. 90-578, terminated the Office of United States commissioner and established in place thereof the Office of United States magistrate. The Act became operative in the District of Columbia on June 27, 1969, when 2 United States magistrates assumed the office pursuant to appointment by order of the District Court dated June 20, 1969.

CASE NOTES

ANALYSIS

Expert opinion.
Standards for involuntary commitment.
Validity.

Expert opinion.

Practicing psychiatrists who had treated patient were qualified to give expert opinion in civil commitment case as to whether patient was likely to injure himself and others in future due to his failure to take prescribed psychotropic medication. Fed.Rules Evid.Rule 702, 18 U.S.C.; D.C. Code 1981, §§ 21-522, 21-544, 21-902(b)(2), 24-301(e)(1, 2). In re Melton, 597 A.2d 892, 1991 D.C. App. LEXIS 273 (1991).

Standards for involuntary commitment.

In civil commitment proceeding pursuant to Federal Reservation Act, evidence was insufficient to support finding of probable cause to believe that detainee was likely to injure himself or others if not detained. D.C. Code § 21-903(a). Bension v. Meredith, 455 F. Supp. 662, 1978 U.S. Dist. LEXIS 19102 (1978).

To impose civil commitment under Federal Reservation Act, magistrate is required to find probable cause to believe not only that detainee is mentally ill within meaning of the Act, but also that he is likely to injure himself or others if not detained. D.C. Code §§ 21-501, 21-901. Bension v. Meredith, 455 F. Supp. 662, 1978 U.S. Dist. LEXIS 19102 (1978).

Validity.

Fact that Congress has legislated two statutes for detaining mentally ill persons, one applicable to the metropolitan District of Columbia area containing federal reservations and one applicable to the District of Columbia, does not present a constitutionally suspect situation, inasmuch as the District of Columbia is neither a state nor territory, but a federal enclave, housing the federal government, and Congress may legislate a detention statute applicable only within the District. D.C. Code §§ 21-501 et seq., 21-901 et seq.; U.S. Const. Amend. 5. Medynski v. Margolis, 389 F. Supp. 743, 1975 U.S. Dist. LEXIS 14458 (1975).

Provisions of District of Columbia code governing involuntary detention and commitment of mentally ill persons on federal reservations in metropolitan District of Columbia are not so inconsistent with preceding provisions governing commitments in District of Columbia as to deprive an individual of due process and equal protection when committed pursuant to authority of provisions governing federal reservations. D.C. Code §§ 21-501 et seq., 21-901 et seq.; U.S. Const. Amend. 5. Medynski v. Margolis, 389 F. Supp. 743, 1975 U.S. Dist. LEXIS 14458 (1975).

Statutory procedure for involuntary detention and commitment of mentally ill persons in District of Columbia is not violative of due process and equal protection. D.C. Code §§ 21-901 et seq., 21-902; U.S. Const. Amend. 5. Medynski v. Margolis, 389 F. Supp. 743, 1975 U.S. Dist. LEXIS 14458 (1975).

§ 21-903. Apprehension by certain officials of persons believed to be mentally ill; proceedings.

(a) An officer or employee of the United States authorized to make arrests, and a guard or watchman employed by the United States, may apprehend and detain a person whom he believes to be a mentally ill person and found in a place specified by section 21-902, and, except as provided by section 21-904, bring the person for a hearing before a United States commissioner for the district where the person was apprehended, and designated as provided by section 21-902. When an immediate hearing before a commissioner cannot be had, the officer or employee may take the person to Saint Elizabeths Hospital. The Superintendent of Saint Elizabeths Hospital may detain the person pending a hearing before a United States commissioner for the District of Columbia, designated as provided by section 21-902, for a period not exceeding 72 hours.

(b) The United States commissioner specified by subsection (a) of this section shall hold a hearing as promptly as practicable after the apprehension of a person pursuant to that subsection and in any event not later than 72 hours thereafter. The hearing shall be conducted at Saint Elizabeths Hospital

if the Superintendent of the hospital certifies that in his opinion it would be prejudicial to the health of the person or unsafe to produce him at a hearing elsewhere. If, after a hearing at a place other than Saint Elizabeths Hospital, the commissioner commits a person to Saint Elizabeths Hospital, an officer, employee, guard, or watchman specified by subsection (a) of this section may transport the person to Saint Elizabeths Hospital in accordance with the order of the commissioner.

(Sept. 14, 1965, 79 Stat. 764, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-903. 1973 Ed., § 21-903.

References in text. — The Act of October 17, 1968, Pub. L. 90-578, terminated the Office of United States commissioner and established in place thereof the Office of United States magistrate. The Act became operative in the District of Columbia on June 27, 1969, when 2 United States magistrates assumed the office pursuant to appointment by order of the District Court dated June 20, 1969.

CASE NOTES

ANALYSIS

Habeas corpus.
Sufficiency of evidence.

Habeas corpus.

Exhaustion of state remedies doctrine was inapplicable to preclude habeas corpus challenge to temporary civil commitment under the Federal Reservation Act. D.C. Code §§ 21-901 to 21-909. Bension v. Meredith, 455 F. Supp. 662, 1978 U.S. Dist. LEXIS 19102 (1978).

Sufficiency of evidence.

In civil commitment proceeding pursuant to Federal Reservation Act, evidence was insufficient to support finding of probable cause to believe that detainee was likely to injure himself or others if not detained. D.C. Code § 21-903(a). Bension v. Meredith, 455 F. Supp. 662, 1978 U.S. Dist. LEXIS 19102 (1978).

§ 21-904. Admission upon written application; right of release.

A person in a place specified by section 21-902 may, upon his written application, be admitted for observation and diagnosis to Saint Elizabeths Hospital in the discretion of the Superintendent of the hospital for a period not exceeding 30 days. If, after admission to Saint Elizabeths Hospital, he expresses a desire for release from the hospital, he shall be released within 72 hours thereafter, unless proceedings for his adjudication as a mentally ill person have been instituted as provided for by section 21-906.

(Sept. 14, 1965, 79 Stat. 764, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-904. 1973 Ed., § 21-904.

§ 21-905. Superintendent to receive persons committed or apprehended under sections 21-902 and 21-903.

The Superintendent of Saint Elizabeths Hospital shall receive for observation and diagnosis a person apprehended or committed as provided by sections 21-902 and 21-903 for the periods therein prescribed, unless the person is sooner discharged or returned to his home or to the State of his residence.

(Sept. 14, 1965, 79 Stat. 764, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-905. 1973 Ed., § 21-905.

§ 21-906. Examinations; adjudications; laws applicable; expense of care and treatment.

(a) The Superintendent of Saint Elizabeths Hospital shall promptly examine a person committed as provided by sections 21-902 and 21-903, and, if not found to be mentally ill, shall forthwith discharge him, or, if found to be mentally ill, shall return him to the State of his residence or to his relatives, if practicable.

(b) Proceedings for the adjudication of a person referred to by subsection (a) of this section, or of a person admitted to the hospital pursuant to section 21-904, as a mentally ill person, and for the appointment of a committee of his person or property, may be instituted in the Superior Court of the District of Columbia by the Secretary of Health and Human Services or by a party interest. The laws of the District of Columbia apply to the proceedings. This chapter does not impose upon the District of Columbia the expense of care and treatment of a person apprehended, detained, or committed under this chapter, unless the person is a resident of the District of Columbia as defined by subsection (b) of section 21-551.

(Sept. 14, 1965, 79 Stat. 765, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 150(f); Apr. 30, 1988, D.C. Law 7-104, § 6(i), 35 DCR 147.)

Prior Codifications. — 1981 Ed., § 21-906. 1973 Ed., § 21-906.

Legislative history of Law 7-104. — Law 7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

CASE NOTES

In general.

To impose civil commitment under Federal Reservation Act, magistrate is required to find probable cause to believe not only that detainee is mentally ill within meaning of the Act, but also that he is likely to injure himself or others if not detained. D.C. Code §§ 21-501, 21-901. Bension v. Meredith, 455 F. Supp. 662, 1978 U.S. Dist. LEXIS 19102 (1978).

Exhaustion of state remedies doctrine was inapplicable to preclude habeas corpus challenge to temporary civil commitment under the Federal Reservation Act. D.C. Code §§ 21-901 to 21-909. Bension v. Meredith, 455 F. Supp. 662, 1978 U.S. Dist. LEXIS 19102 (1978).

§ 21-907. Transfer of military personnel.

A person belonging to the armed forces arrested, apprehended, detained, or committed pursuant to this chapter shall, upon the request of the head of the department having jurisdiction over the service to which he belongs, be transferred forthwith to the custody of his service.

(Sept. 14, 1965, 79 Stat. 765, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-907. 1973 Ed., § 21-907.

§ 21-908. Care in a Veterans' Administration facility.

(a) If a person adjudicated to be a mentally ill person under this chapter is entitled to care and treatment in a Veterans' Administration facility, the United States District Court for the District of Columbia may commit him to the custody of the Administrator of Veterans' Affairs for placement in an available facility, or the Superintendent of Saint Elizabeths Hospital may transfer him to such a facility.

(b) This chapter does not limit, restrict, or deprive the courts of a State or the District of Columbia of jurisdiction to commit to the Veterans' Administration a mentally ill person entitled to care and treatment by the Veterans' Administration in accordance with the laws of the State or the District of Columbia.

(Sept. 14, 1965, 79 Stat. 765, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-908. 1973 Ed., § 21-908.

§ 21-909. Payment of expenses of transfers.

The Superintendent of Saint Elizabeths Hospital may arrange for and pay the expenses of the transfer of a person committed to his custody pursuant to this chapter or admitted to the hospital pursuant to section 21-904 to his relatives or to a hospital in the State of his residence, and, in connection with the transfer, may pay the transportation and expenses of attendants necessary to insure safe travel.

(Sept. 14, 1965, 79 Stat. 765, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-909. 1973 Ed., § 21-909.

CHAPTER 11. COMMITMENT AND MAINTENANCE OF PERSONS WITH MODERATE INTELLECTUAL DISABILITIES.

Sec.
21-1101. [Repealed].
21-1102 to 21-1108A. [Repealed].
21-1109 to 21-1112. [Repealed].
21-1113. [Repealed].
21-1114. Proceeding when child brought before Family Division appears to have at least moderate mental retardation.
Sec.
21-1115. Inquiry under this chapter if person convicted of offense.
21-1116 to 21-1118. [Repealed].
21-1119. [Repealed].
21-1120 to 21-1123. [Repealed].

§ 21-1101. Forest Haven defined. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 766, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 150(g)(1)(A); Oct. 22, 1970, 84 Stat. 1088, Pub. L. 91-490, § 2(a)(4); Mar. 3, 1979, D.C. Law 2-137, § 604(a)(5), 25 DCR 5094.)

Cross references. — Interstate Compact on Mental Health, see § 7-1101 et seq.

Prior Codifications. — 1981 Ed., § 21-1101.

1973 Ed., § 21-1101.

Legislative history of Law 2-137. — Law 2-137, the "Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978," was introduced in Council and assigned Bill No. 2-108, which was referred to the Committee on Human Resources and Aging. The Bill was adopted on first and second readings on September 19, 1978, and October 3, 1978, respectively. Signed by the Mayor on November 8, 1978, it was assigned Act No. 2-297 and transmitted to both Houses of Congress for its review.

CASE NOTES

In general.

Where proposed definition of mental illness for civil commitment purposes had excluded mental deficiency but version which was enacted by Congress included mental deficiency within definition of mental illness, such enactment expressed awareness that mental retardation and mental illness or disease are not mutually exclusive conditions. D.C. Code §§ 21-501 to 21-592, 21-1101 to 21-1123, 24-301(d). United States v. Jackson, 553 F.2d 109, 1976 U.S. App. LEXIS 5752 (C.A.D.C. 1976).

§§ 21-1102 to 21-1108A. Persons received in Forest Haven; age limit; petition as to substantial retardation; contents; verification; notice; process; summons; contents; answer not required; return day; service; appointment and qualifications of physicians; examination; certificate; warrant to take into custody; detention or temporary guardianship; place of detention; hearing; continuances; character of proofs; jury trial; dismissal and discharge, or placement in Forest Haven; controlling consider-

ations; voluntary admission to Forest Haven. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-137, § 604a1, 25 DCR 5094.)

Prior Codifications. — 1981 Ed., §§ 21-1102 to 21-1108A.

§ 21-1109. Private and public patients; bond for support and maintenance; sufficiency and justification of sureties. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 768, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 159(g)(5); Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 2(a)(2).)

Prior Codifications. — 1981 Ed., § 21-1109.
1973 Ed., § 21-1109.
References in text. — Section 21-1108, referred to in the first sentence of subsection (a) of this section, was repealed by the Act of March 3, 1979, D.C. Law 2-137, § 604(a)(1).

§ 21-1110. Liability of estate of public patient for maintenance. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 769, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 150(g)(1)(A); Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 2(a)(1), (2), (5).)

Cross references. — Care and treatment expenses, right to setoff, see § 4-603.
Prior Codifications. — 1981 Ed., § 21-1110.
1973 Ed., § 21-1110.
References in text. — Section 21-1108A, referred to in the first sentence of this section, was repealed by the Act of March 3, 1979, D.C. Law 2-137, § 604(a)(1).

§ 21-1111. Proceedings to charge relatives legally responsible for maintenance of public patient; collection of maintenance payments; enforcement of order; liability of decedent's estate. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 769, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 150(g)(1)(A), (6); Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 2(a)(1), (2), (6); Mar. 24, 1998, D.C. Law 12-81, § 14(m), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 21-1111.

1973 Ed., § 21-1111.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

References in text. — Section 21-1108A, referred to in the first sentence of subsection (a), was repealed by the Act of March 3, 1979, D.C. Law 2-137, § 604(a)(1).

CASE NOTES

ANALYSIS

Common law duty of support.
Support from family members.

Common law duty of support.

Parents have common-law duty to support their physically or mentally disabled children, even after children have reached age of majority. Nelson v. Nelson, 548 A.2d 109, 1988 D.C. App. LEXIS 169 (1988).

Support from family members.

Under subsection (a), if a court is asked to assess the estate of a mentally retarded person for partial reimbursement for his maintenance, then the court must also assess the estate of the person's family for full reimbursement. In re W.M., 112 WLR 369 (Super. Ct.).

§ 21-1112. Public patients may become private patients by filing bond and paying advance. [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 770, Pub. L. 89-183, § 1; Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 2(a)(2).)

Prior Codifications. — 1981 Ed., § 21-1112.

1973 Ed., § 21-1112.

§ 21-1113. Restrictions on discharge; petition for discharge; causes for discharge; superintendent to be notified; notice of variation of order; denial on petition not a bar to another. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-137, § 604(a)(1), 25 DCR 5094.)

Prior Codifications. — 1981 Ed., § 21-1113.

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 21-1101.

§ 21-1114. Proceeding when child brought before Family Division appears to have at least moderate mental retardation.

When a child is brought before the Family Division of the Superior Court upon allegations that he is delinquent, neglected, or in need of supervision, and it appears to the court, on the testimony of a physician or psychologist or other

evidence, that the child is at least moderately mentally retarded as defined in the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978 (D.C. Official Code, § 7-1301.01 et seq.), the court may adjourn the proceedings, other than proceedings on a motion to transfer pursuant to section 16-2307, and direct the child's parent or a guardian appointed by the court to file a petition under that act. The court may order that, pending the preparation, filing, and hearing of the petition, the child be detained in a place of safety, or be placed under the guardianship of a suitable person, if that person enters into a recognizance for his appearance.

(Sept. 14, 1965, 79 Stat. 771, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 150(g)(7); Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 2(a)(1), (12); Mar. 3, 1979, D.C. Law 2-137, § 604(a)(2), 25 DCR 5094; Mar. 24, 1998, D.C. Law 12-81, § 14(n), 45 DCR 745; Apr. 24, 2007, D.C. Law 16-305, § 35(b)(2), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 21-1114.

1973 Ed., § 21-1114.

Effect of amendments. — D.C. Law 16-305, in the section name line, substituted "Proceeding when child brought before Family Division appears to have at least moderate mental retardation" for "Proceeding when child brought before Family Division appears at least moderately mentally retarded".

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 21-1101.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-1111.

Cited in In re W.A.F., App. D.C., 573 A.2d 1264 (1990).

Legislative history of Law 16-305. — For Law 16-305, see notes following § 21-501.

CASE NOTES

In general.

Section 16-2315 prescribes a standard of incompetency for juvenile delinquency proceedings which is precisely the same as the standard required for commitment of mentally retarded juveniles under this section and § 6-1926. In both instances, the respondent must be "at least moderately mentally retarded," as defined in § 6-1902(2). The result of this symmetry is that a child offender will receive treatment through either the juvenile division or a facility for the mentally retarded. In re W.F., 116 WLR 1913 (Super. Ct.).

§ 21-1115. Inquiry under this chapter if person convicted of offense.

(a) On the conviction by a court of record of competent jurisdiction of a person of an offense, or of a violation of an ordinance which is in whole or in part a violation of a statute of the District of Columbia, the court when satisfied on the testimony of a physician or a psychologist or other evidence that the person is at least moderately mentally retarded as defined in the Mentally Retarded Citizens Constitutional Rights and Dignity Act (D.C. Official Code, § 7-1301.01 et seq.), may suspend sentence, or suspend the entering of an order sending the person to a jail, prison, or reformatory, or to a training or industrial school, and direct that a parent or guardian appointed by the court file a petition under that act.

(b) When the court directs a petition to be filed pursuant to subsection (a) of this section, it may order that, pending the preparation, filing and hearing of

the petition, the person be detained in a place of safety, or be placed under the guardianship of a suitable person, if that person enters into a recognizance for his appearance.

(c) Where, upon the hearing of a petition filed pursuant to this section or pursuant to a subsequent hearing under this chapter, the person is found not to be at least moderately mentally retarded, the court shall impose sentence.

(Sept. 14, 1965, 79 Stat. 771, Pub. L. 89-183, § 1; July 29, 1970, 84 Stat. 568, Pub. L. 91-358, title I, § 150(g)(1)(A); Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 2(a)(1); Mar. 3, 1979, D.C. Law 2-137, § 604(a)(3), (4), 25 DCR 5094; Mar. 24, 1998, D.C. Law 12-81, § 14(o), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 21-1115.

1973 Ed., § 21-1115.

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 21-1101.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-1111.

References in text. — The Mentally Retarded Citizens Constitutional Rights and Dignity Act, referred to in subsection (a) of this section, is codified in § 7-1301.01 et seq. in the 2001 Edition of the D.C. Official Code.

§§ 21-1116 to 21-1118. Transfer to Saint Elizabeths Hospital when person becomes insane; separate docket of cases brought under section 21-1103; reports of commissions; transfer of substantially retarded from National Training Schools for Boys or Girls. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-137, § 604a1, 25 DCR 5094.)

Prior Codifications. — 1981 Ed., §§ 21-1116 to 21-1118.

§ 21-1119. Removal from school of nonresidents of the District of Columbia [Repealed].

Repealed.

(Sept. 14, 1965, 79 Stat. 772, Pub. L. 89-183, § 1; Oct. 22, 1970, 84 Stat. 1087, Pub. L. 91-490, § 2(a)(2).)

Prior Codifications. — 1981 Ed., § 21-1119.

1973 Ed., § 21-1119.

Transfer of Functions. — Functions of the Department of Public Welfare were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§§ 21-1120 to 21-1123. Paroles; conditions; expense; discretion of superintendent; violation; return; citation, order, or process on patients to be served only by superintendent; approval of patients' contracts, etc., by court; offenses and penalties. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-137, § 604a1, 25 DCR 5094.)

Prior Codifications. — 1981 Ed., §§ 21-1120 to 21-1123.

CHAPTER 12. USE OF TRAINED EMPLOYEES TO ADMINISTER MEDICATION TO PERSONS WITH INTELLECTUAL DISABILITIES OR OTHER DISABILITIES.

Sec.
21-1201. Definitions.
21-1202. Self-administration of medication by program participants.
21-1203. Administration of medication to program participants by trained employees.
21-1204. Requirements of medication orders.
21-1205. Rules and regulations for implementation.
21-1206. Fees.

§ 21-1201. Definitions.

For the purposes of this chapter, the term:

(1) "Administer" means:

(A) The direct application of medication to the human body whether by ingestion, inhalation, insertion, or topical means; or

(B) An injection of epipen or equivalent ejection system for emergency purposes only.

(2) Repealed.

(3) "Developmental disability" means a severe chronic disability of a person 5 years of age or older which:

(A) Is attributable to a mental or physical impairment or a combination of mental and physical impairments;

(B) Is manifested before the person attains 22 years of age;

(C) Is likely to continue indefinitely;

(D) Results in substantial functional limitations in 3 or more of the following major life activities:

(i) Self care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction;

(vi) Capacity for independent living; and

(vii) Economic self-sufficiency; and

(E) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated; except that such term, when applied to infants and young children means individuals from birth to 5 years of age, inclusive, who have substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting developmental disability if services are not provided.

(4) "General supervision" means:

(A) A registered nurse shall be available for verbal or on-site consultation to the trained employee or licensed practical nurse.

(B) A registered nurse shall review and document the trained employee's ability to administer medication correctly to program participants every 3 months for the 1st year and every 6 months thereafter.

(5) "Licensed practitioner" means a medical doctor, dentist, or advanced registered nurse.

(6) "Medication" means a controlled (excluding Classes I and II) or noncontrolled substance or treatment regarded as effective in bringing about recovery, restoration of health, alleviation of pain or symptoms of an illness, or the normal functioning of the body.

(7) "Mental retardation" means a substantial limitation in mental capacity that manifests before 18 years of age, characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in 2 or more of the following applicable, adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work.

(8) "Monitor" means:

(A) A registered nurse shall annually review the program participant's ability to self-administer medication correctly as prescribed.

(B) A registered nurse shall document in the program participant's records an assessment of the program participant's ability to continue self-administering the program participant's medication.

(C) A trained employee shall, at a minimum, review quarterly and document the program participant's ability to self-administer medication as prescribed.

(9) "Prescription" means an order for medication signed by a licensed practitioner or transmitted by the licensed practitioner to a pharmacist, registered nurse, or licensed practical nurse by word of mouth, telephone, telegraph, or other means of communication, and recorded in writing by the pharmacist, registered nurse, or licensed practical nurse.

(10) "Program" means an agency licensed, certified, or approved by the District government as a child care facility, private school, day program, community based residence, or other agency providing residential services, education, habilitation, vocational, or employment training services to individuals with mental retardation or other developmental disability.

(11) "Program participant" means an individual with mental retardation or other development disability who is enrolled in or attending a public or private program.

(12) "Self-administration of medication" means that the program participant has the ability to identify, pour, and administer medication without assistance.

(13) "Trained employee" means an individual employed to work in a program who has successfully completed a training program approved by the Mayor and is certified to administer medication to program participants, or an individual who has successfully completed a training program in medication administration approved by the State of Maryland or the Commonwealth of Virginia.

(Sept. 26, 1996, D.C. Law 11-52, § 601(b), 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-255, § 20(c), 44 DCR 1271; Mar. 26, 1999, D.C. Law 12-175, § 1002(a), (b), 45 DCR 7193; Oct. 20, 1999, D.C. Law 13-38, § 1202(b), 46 DCR 6373.)

Prior Codifications. — 1981 Ed., § 21-1201.

Effect of amendments. — D.C. Law 13-38 repealed par. (2), which had read:

" 'Consent' means permission voluntarily given in writing with sufficient knowledge and comprehension of the subject matter involved to enable the person giving permission to make an informed and enlightened decision, without any element of force, fraud, deceit, duress, or other form of constraint or coercion."

Temporary Amendment of Section. — Section 2 (b) of D.C. Law 13-32 repealed subsec. (2).

Section 4 (b) of D.C. Law 13-32 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — Sections 601-606 of D.C. Law 10-253 enacted a new chapter to be cited as "Use of Trained Employees to Administer Medication to Persons with Mental Retardation or Other Disabilities Temporary Act of 1994" which was substantially similar to the chapter enacted by D.C. Law 11-52.

Section 1301(b) of D.C. Law 10-253 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary addition of chapter substantially similar to provisions added by D.C. Law 11-52, see § 601-606 of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary addition of chapter, see § 601 (b) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 602(a) and (b) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), § 602(a) and (b) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669), and § 602(a) and (b) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 45 DCR 3446).

For temporary (90-day) amendment of section, see § 602(a), (b) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90-day) amendment of section, see § 2(b) of the Use of Trained Employees to Administer Medication Clarification Emergency Amendment Act of 1999 (D.C. Act 13-73, May 26, 1999, 46 DCR 5166).

For temporary (90-day) amendment of section, see § 1202(b) of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 12-175. — Law 12-175, the "Fiscal Year 1999 Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Legislative history of Law 13-32. — Law 13-32, the "Use of Trained Employees to Administer Medication Clarification Temporary Amendment Act of 1999," was introduced in Council and assigned Bill No. 13-228. The Bill was adopted on first and second readings on May 4, 1999, and June 8, 1999, respectively. Signed by the Mayor on June 24, 1999, it was assigned Act No. 13-98 and transmitted to both Houses of Congress for its review. D.C. Law 13-32 became effective on October 7, 1999.

Legislative history of Law 13-38. — Law 13-38, the "Service Improvement and Fiscal Year 2000 Budget Support Act of 1999," was introduced in Council and assigned Bill No. 13-161, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 11, 1999, and June 22, 1999, respectively. Signed by the Mayor on July 8, 1999, it was assigned Act No. 13-111 and transmitted to both Houses of Congress for its review. D.C. Law 13-38 became effective on October 20, 1999.

§ 21-1202. Self-administration of medication by program participants.

A program participant may self-administer medication provided that:

(1) The program participant has been assessed by a registered nurse to have the ability to self-administer medication;

(2) The self-administration of medication is monitored; and

(3) The program participant's self-administration skills include, but are not limited to, orientation to time, knowledge of quantities and proper storage, and understanding of possible medication reactions.

(Sept. 26, 1995, D.C. Law 11-52, § 601(b), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 21-1202.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 21-1201.

§ 21-1203. Administration of medication to program participants by trained employees.

(a) Notwithstanding any other law, rule, or regulation, a program employee who has been trained in accordance with § 21-1205(b) may administer prescription or nonprescription medication to a program participant in compliance with the signed, written instructions of a licensed practitioner if:

(1) The program participant, guardian, or parent has been notified of the administration of medication in writing.

(2) The trained employee is under the general supervision of a registered nurse who has been trained and certified pursuant to rules and regulations promulgated by the Mayor under § 21-1205(a), or has successfully completed a training program in medication administration approved by the State of Maryland or the Commonwealth of Virginia; and

(3) The program participant is incapable of self-administration of medication.

(b) Program employees who are trained to administer medication in accordance with this chapter shall be immune from civil liability arising from a wrongful act or omission in administering medication, except that they shall not be immune from civil liability if the wrongful act or omission in administering medication is intentional or manifests a willful or wanton disregard for the health or safety of the program participant to whom the medication is administered. Neither the District government nor the program shall be liable in circumstances where program employee is immune under this section, unless the conduct of the employee is gross negligence.

(c) Registered nurses who authorize or monitor the administration of medication, or provide training in accordance with this chapter, shall be immune from civil liability arising from a wrongful act or omission in authorizing or monitoring the administration of medication or providing training, except that they shall not be immune from civil liability if the wrongful act or omission in authorizing or monitoring the administration of medication or providing training is intentional or manifests a willful or wanton

disregard for the health or safety of the program participant to whom the medication is administered. Neither the District government nor the program shall be liable in circumstances where the program employee is immune under this section, unless the conduct of the employee is gross negligence.

(Sept. 26, 1995, D.C. Law 11-52, § 601(b), 42 DCR 3684; Mar. 26, 1999, D.C. Law 12-175, § 1002(c), 45 DCR 7193; Oct. 20, 1999, D.C. Law 13-38, § 1202(c), 46 DCR 6373.)

Prior Codifications. — 1981 Ed., § 21-1203.

Effect of amendments. — D.C. Law 13-38 rewrote par. (a)(1), which had read:

"The program participant, guardian, or parent has consented to the administration of medication in writing;".

Temporary Amendment of Section. — Section 2(c) of D.C. Law 13-32 substituted "has been notified of" for "has consented to" in (a)(1).

Section 4(b) of D.C. Law 13-32 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 602(c) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), § 602(c) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669), and § 602(c) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90-day) amendment of section, see § 602(c) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90-day) amendment of section, see § 2(c) of the Use of Trained Employees to Administer Medication Clarification Emergency Amendment Act of 1999 (D.C. Act 13-73, May 26, 1999, 46 DCR 5166).

For temporary (90-day) amendment of section, see § 1202(c) of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 21-1201.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 21-1201.

Legislative history of Law 13-32. — For legislative history of D.C. Law 13-32, see Historical and Statutory Notes following § 21-1201.

Legislative history of Law 13-38. — For legislative history of D.C. Law 13-38, see notes following § 21-1201.

§ 21-1204. Requirements of medication orders.

(a) The written instructions of the licensed practitioner shall state the name of the program participant who is to receive medication, the name of the medication, name and telephone number of the licensed practitioner, the time of administration, dosage, method of administration, and duration of medication.

(b) The medication shall be labeled so as to state the name of the program participant, the name of the medication, name of the licensed practitioner, the name and telephone number of the pharmacy, the date dispensed, the amount and expiration date, the time of administration, duration of medication, dosage, and method of administration.

(c) The medication shall be accompanied by a medical order form which shall state the name of the program participant, the name of the medication, name and telephone number of the licensed practitioner, the date dispensed, the time of administration, duration of medication, dosage, method of administration, and any potential major side effects.

(Sept. 26, 1995, D.C. Law 11-52, § 601(b), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 21-1204.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 21-1201.

§ 21-1205. Rules and regulations for implementation.

(a) Within 90 days of the effective date of this chapter, the Mayor shall issue proposed rules and regulations to implement this chapter. The rules and regulations issued shall include procedures for:

(1) Obtaining and filing written instructions and notification required by this chapter;

(2) Periodic review of written instructions;

(3) Storage of medication;

(4) Record keeping;

(5) Initial and ongoing training for certification and recertification for all program employees to administer medication;

(6) The administration of medication in emergency or life-threatening circumstances;

(7) The provision of general supervision by registered nurses of trained employees;

(8) The provision for the successful completion of training for program employees pursuant to this chapter;

(9) The monitoring of trained employees who may administer medication to program participants; and

(10) The development of assessment tools.

(b) Training programs for all program employees who may be authorized to administer medication in accordance with this chapter shall be approved by the Mayor or shall be medication administration programs approved by the State of Maryland or the Commonwealth of Virginia. The Mayor may enter into agreements of reciprocity with other jurisdictions, under which training programs approved in such jurisdictions shall also be accepted in the District of Columbia.

(Sept. 26, 1995, D.C. Law 11-52, § 601(b), 42 DCR 3684; Mar. 26, 1999, D.C. Law 12-175, § 1002(d), 45 DCR 7193; Oct. 20, 1999, D.C. Law 13-38, § 1202(d), 46 DCR 6373.)

Prior Codifications. — 1981 Ed., § 21-1205.

Effect of amendments. — D.C. Law 13-38 rewrote par. (a)(1), which had read:

"Obtaining and filing written instructions and consent required by this chapter;".

Temporary Amendment of Section. — Section 2(d) of D.C. Law 13-32 substituted "notification" for "consent" in (a)(1).

Section 4(b) of D.C. Law 13-32 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 602(d) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), § 602(d) of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669), and § 602(d) of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1999 (D.C. Act 13-41, March 31, 1999, 46 DCR 3446).

For temporary (90-day) amendment of section, see § 2(d) of the Use of Trained Employees to Administer Medication Clarification Emergency Amendment Act of 1999 (D.C. Act 13-73, May 26, 1999, 46 DCR 5166).

For temporary (90-day) amendment of section, see § 1202(d) of the Service Improvement

and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 21-1201.

Legislative history of Law 12-175. — For legislative history of D.C. Law 12-175, see Historical and Statutory Notes following § 21-1201.

Legislative history of Law 13-32. — For legislative history of D.C. Law 13-32, see Historical and Statutory Notes following § 21-1201.

Legislative history of Law 13-38. — For legislative history of D.C. Law 13-38, see notes following § 21-1201.

Delegation of Authority. — Delegation of authority pursuant to the Use of Trained Employees to Administer Medication to Persons with Mental Retardation or Other Disabilities Act of 1995, see Mayor's Order 2000-56, April 12, 2000 (47 DCR 4736).

§ 21-1206. Fees.

The Mayor is authorized to charge a registration fee to applicants certified as a trained medication employee.

(Oct. 20, 1999, D.C. Law 13-38, § 1202(e), 46 DCR 6373.)

Temporary Amendment of Section. — Section 2 (e) of D.C. Law 13-32 added this section pertaining to fees.

Section 4 (b) of D.C. Law 13-32 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) amendment of section, see § 2(e) of the Use of Trained Employees to Administer Medication Clarification Emergency Amendment Act of 1999 (D.C. Act 13-73, May 26, 1999, 46 DCR 5166).

For temporary (90-day) amendment of section, see § 1202(e) of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 13-32. — For legislative history of D.C. Law 13-32, see Historical and Statutory Notes following § 21-1201.

Legislative history of Law 13-38. — For legislative history of D.C. Law 13-38, see notes following § 21-1201.

CHAPTER 13. ALCOHOLICS AND DRUG ADDICTS. [REPEALED].

Sec.
21-1301 to 21-1304. [Repealed].

§§ 21-1301 to 21-1304. Appointment of committee; bond; powers and duties; jurisdiction of court over property; discharge. [Repealed].

Repealed.

(Feb. 28, 1987, D.C. Law 6-204, § 3, 34 DCR 632.)

Prior Codifications. — 1981 Ed., §§ 21-1301 to 21-1304.

CHAPTER 15. CONSERVATORS. [REPEALED].

Sec.
21-1501 to 21-1507. [Repealed].

§§ 21-1501 to 21-1507. Appointment of conservators; filing of petition; requirements; time and place of hearings; appointment of guardian ad litem; bond; powers and duties; discharge; appointment of temporary conservator; personal welfare of person under conservatorship; lis pendens. [Repealed].

Repealed.

(Feb. 28, 1987, D.C. Law 6-204, § 3, 34 DCR 632.)

Cross references. — Presumption of capacity, see § 21-2203.

Prior Codifications. — 1981 Ed., §§ 21-1501 to 21-1507.

Chapter 17. General Fiduciary Relations.

Subchapter I. Uniform Fiduciaries Act

Sec.
21-1701. Definitions.
21-1702. Application of payment made to fiduciaries.
21-1703. Transfer of negotiable instruments by fiduciary.
21-1704. Check drawn by fiduciary payable to third person.
21-1705. Check drawn by and payable to fiduciary.
21-1706. Deposit in name of fiduciary as such.
21-1707. Deposit in name of principal; check drawn thereon by fiduciary; check payable to drawee bank.
21-1708. Conforming amendment.
21-1709. Deposit in names of two or more trustees.
21-1710. Law not retroactive.
21-1711. Cases not provided for by chapter.
21-1712. Short title.

Subchapter II. General Provisions

21-1721. [Repealed].
21-1722. Prohibition from exercising powers conferred upon trustee.

Subchapter I. Uniform Fiduciaries Act.

§ 21-1701. Definitions.

(a) In this chapter unless the context otherwise requires:

"bank" includes a person or association of persons, whether incorporated or not, carrying on the business of banking;

"fiduciary" includes a trustee under a trust, express, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or other person acting in a fiduciary capacity for a person, trust, or estate;

"person" includes a corporation, partnership, or other association, or two or more persons having a joint or common interest;

"principal" includes a person to whom a fiduciary as such owes an obligation.

(b) A thing is done "in good faith" within the meaning of this chapter, when it is in fact done honestly, whether negligently or not.

(Sept. 14, 1965, 79 Stat. 776, Pub. L. 89-183, § 1.)

Cross references. — Fiduciary transfer of securities, see § 28:8-401 et seq.

Prior Codifications. — 1981 Ed., § 21-1701.

1973 Ed., § 21-1701.

Editor's notes. — Uniform Law: This section is based upon § 1 of the Uniform Fiduciaries Act.

CASE NOTES

Analysis

Construction and application.
Knowledge of fiduciary breach.

Construction and application.

Uniform Fiduciaries Act applies only to liability for check transactions, so that maintenance of excessive deposits by defendant financial institutions, in action challenging various aspects of charitable hospital's fiscal management, would not fall within any of the Act's provisions. D.C. Code § 21-1701 et seq. Stern v. Lucy Webb Hayes Nat'l Training School for Deaconesses & Missionaries, 381 F. Supp. 1003, 1974 U.S. Dist. LEXIS 7380 (1974).

Under District of Columbia law, an entity, whether or not recognized as a fiduciary, must be recognized as one with capacity to sue to bring action, and therefore committee that was established pursuant to Chapter 11 plan to oversee proceedings on behalf of unsecured creditors did not have capacity to bring common-law causes of action against debtors' prepetition auditing firm in committee's com-

mon name under District of Columbia law even if it acted as a fiduciary under District of Columbia law. Plan Comm. v. PricewaterhouseCoopers, LLP, 335 B.R. 234, 2005 U.S. Dist. LEXIS 18889 (2005), dismissed by 2007 U.S. Dist. LEXIS 29240 (D.D.C. Apr. 20, 2007).

Knowledge of fiduciary breach.

Notice from adverse claimant asserting by affidavit that depositor is trustee and that claimant believes such trustee is about to misappropriate the funds in account constitutes "actual knowledge" by the bank under the Uniform Fiduciary Act with respect to breach of obligation by the fiduciary. D.C. Code §§ 21-1701 et seq., 26-203. Goldstein v. Riggs Nat'l Bank, 459 F.2d 1161, 1972 U.S. App. LEXIS 11343 (C.A.D.C. 1972).

Evidence in mining workers' derivative action against welfare fund trustees, union and bank controlled by union compelled conclusion that bank knowingly accepted and participated in continuing breach of trust which redounded substantially to its own benefit, i.e., leaving of large amounts of uninvested cash in demand deposits in bank; proof was sufficient despite statute requiring, for bank's liability for transactions with trustee, actual knowledge of breach of trust or knowledge of such facts that its action amounts to bad faith. Labor Management Relations Act, 1947, § 302(c), 29 U.S.C. § 186(c); D.C. Code § 21-1701 et seq. Blankenship v. Boyle, 329 F. Supp. 1089, 1971 U.S. Dist. LEXIS 13548 (1971).

§ 21-1702. Application of payment made to fiduciaries.

A person who in good faith pays or transfers to a fiduciary money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of the payment or transfer is not invalid in consequence of a misapplication by the fiduciary.

(Sept. 14, 1965, 79 Stat. 776, Pub. L. 89-183, § 1.)

Cross references. — Joint or trust accounts, safe deposit boxes, etc., see § 26-801 et seq.

Prior Codifications. — 1981 Ed., § 21-1702.

1973 Ed., § 21-1702.

Editor's notes. — Uniform Law: This section is based upon § 2 of the Uniform Fiduciaries Act.

CASE NOTES

ANALYSIS

Construction and application.
Jury questions.

Construction and application.

Uniform Fiduciaries Act applies only when one person honestly deals with another knowing him to be a fiduciary and, in face of conflicting evidence, question of whether person is authorized to receive funds is best left to trier of fact. D.C. Code 1973, § 21-1702. Boutros v. Riggs Nat'l Bank, D.C., 655 F.2d 1257, 1981 U.S. App. LEXIS 13254 (C.A.D.C. 1981).

Jury questions.

In action by depositor against bank to recover unauthorized withdrawals of funds from savings account, evidence that depositor had not authorized another person to make withdrawals from his account and that depositor's statement that that other individual would be handling his business affairs was not sufficient for bank to rely upon so as to insulate bank from liability under Uniform Fiduciaries Act was sufficient for jury. D.C. Code 1973, § 21-1702. Boutros v. Riggs Nat'l Bank, D.C., 655 F.2d 1257, 1981 U.S. App. LEXIS 13254 (C.A.D.C. 1981).

§ 21-1703. Transfer of negotiable instruments by fiduciary.

If a negotiable instrument payable or indorsed to a fiduciary as such is indorsed by the fiduciary, or if a negotiable instrument payable or indorsed to

his principal is indorsed by a fiduciary empowered to indorse the instrument on behalf of his principal, the indorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in indorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of the breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, the instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in a transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in transferring the instrument.

(Sept. 14, 1965, 79 Stat. 776, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-1703.
1973 Ed., § 21-1703.

Editor's notes. — Uniform Law: This section is based upon § 4 of the Uniform Fiduciaries Act.

§ 21-1704. Check drawn by fiduciary payable to third person.

If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such an instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of the breach or with knowledge of facts that his action in taking the instrument amounts to bad faith. Where, however, the instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered in a transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the instrument.

(Sept. 14, 1965, 79 Stat. 777, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-1704.
1973 Ed., § 21-1704.

Editor's notes. — Uniform Law: This section is based upon § 5 of the Uniform Fiduciaries Act.

§ 21-1705. Check drawn by and payable to fiduciary.

If a check or other bill of exchange is drawn by a fiduciary as such or in the name of his principal by a fiduciary empowered to draw such an instrument in the name of his principal, payable to the fiduciary personally, or payable to a third person and by him transferred to the fiduciary, and is thereafter

transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligations as fiduciary unless he takes the instrument with actual knowledge of the breach or with knowledge of facts that his action in taking the instrument amounts to bad faith.

(Sept. 14, 1965, 79 Stat. 777, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-1705.
1973 Ed., § 21-1705.

Editor's notes. — Uniform Law: This section is based upon § 6 of the Uniform Fiduciaries Act.

§ 21-1706. Deposit in name of fiduciary as such.

If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which the deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check or with knowledge of facts that its action in paying the check amounts to bad faith. If, however, the check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

(Sept. 14, 1965, 79 Stat. 777, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-1706.
1973 Ed., § 21-1706.

Editor's notes. — Uniform Law: This section is based upon § 7 of the Uniform Fiduciaries Act.

CASE NOTES

ANALYSIS

Actual or constructive knowledge.
Construction and application.
Negligence.

Actual or constructive knowledge.

Notice from adverse claimant asserting by affidavit that depositor is trustee and that claimant believes such trustee is about to misappropriate the funds in account constitutes "actual knowledge" by the bank under the Uniform Fiduciary Act with respect to breach of obligation by the fiduciary. D.C. Code §§ 21-1701 et seq., 26-203. Goldstein v. Riggs Nat'l Bank, 459 F.2d 1161, 1972 U.S. App. LEXIS 11343 (C.A.D.C. 1972).

A bank or other financial institution is only liable for losses sustained by a trust, by reason of its dealings with a trustee, if the institution had actual or constructive knowledge that the transaction was in breach of trustee's fiduciary duty, and such principle applies to dealings with corporate fiduciaries as well as trustees, and to situations where alleged breach entails the maintenance of excessive demand deposits in defendant bank. Stern v. Lucy Webb Hayes Nat'l Training School for Deaconesses & Missionaries, 381 F. Supp. 1003, 1974 U.S. Dist. LEXIS 7380 (1974).

Actual knowledge of a breach of fiduciary duty of a trustee can be inferred from the sheer size and inactivity of some accounts in question, the number and significance of interlocking relationships, and a history of questionable investment transactions with the fiduciary. Stern v. Lucy Webb Hayes Nat'l Training School for Deaconesses & Missionaries, 381 F. Supp. 1003, 1974 U.S. Dist. LEXIS 7380 (1974).

Evidence in mining workers' derivative ac-

tion against welfare fund trustees, union and bank controlled by union compelled conclusion that bank knowingly accepted and participated in continuing breach of trust which redounded substantially to its own benefit, i.e., leaving of large amounts of uninvested cash in demand deposits in bank; proof was sufficient despite statute requiring, for bank's liability for transactions with trustee, actual knowledge of breach of trust or knowledge of such facts that its action amounts to bad faith. Labor Management Relations Act, 1947, § 302(c), 29 U.S.C. § 186(c); D.C. Code § 21-1701 et seq. Blankenship v. Boyle, 329 F. Supp. 1089, 1971 U.S. Dist. LEXIS 13548 (1971).

Construction and application.

Uniform Fiduciaries Act applies only to liability for check transactions, so that maintenance of excessive deposits by defendant financial institutions, in action challenging various aspects of charitable hospital's fiscal management, would not fall within any of the Act's provisions. D.C. Code § 21-1701 et seq. Stern v. Lucy Webb Hayes Nat'l Training School for Deaconesses & Missionaries, 381 F. Supp. 1003, 1974 U.S. Dist. LEXIS 7380 (1974).

Negligence.

Trustees may be found guilty of a breach of trust even for mere negligence in the maintenance of accounts in banks with which they are associated, while corporate directors are generally only required to show entire fairness to the corporation and full disclosure of the potential conflict of interest to the board of directors. Stern v. Lucy Webb Hayes Nat'l Training School for Deaconesses & Missionaries, 381 F. Supp. 1003, 1974 U.S. Dist. LEXIS 7380 (1974).

§ 21-1707. Deposit in name of principal; check drawn thereon by fiduciary; check payable to drawee bank.

If a check is drawn upon a bank account of his principal by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay the checks without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check, or with knowledge of facts that its action in paying the check amounts to bad faith. If, however, the check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

(Sept. 14, 1965, 79 Stat. 777, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-1707.
1973 Ed., § 21-1707.

Editor's notes. — Uniform Law: This section is based upon § 8 of the Uniform Fiduciaries Act.

§ 21-1708. Conforming amendment.

When a fiduciary deposits in a bank to his personal credit checks:

(1) drawn by him upon an account in his own name as fiduciary; or

(2) payable to him as fiduciary; or

(3) drawn by him upon an account in the name of his principal if he is empowered to draw checks thereon; or

(4) payable to his principal and indorsed by him, if he is empowered to indorse such checks —

or if he otherwise deposits funds held by him as fiduciary, the bank has notice of the breach of fiduciary duty if the instrument is deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(Sept. 14, 1965, 79 Stat. 778, Pub. L. 89-183, § 1; March 21, 1995, D.C. Law 10-249, § 3, 42 DCR 467; Apr. 9, 1997, D.C. Law 11-255, § 20(d), 44 DCR 1271.)

Prior Codifications. — 1981 Ed., § 21-1708.

1973 Ed., § 21-1708.

Legislative history of Law 10-249. — Law 10-249, the "Uniform Commercial Code-Negotiable Instruments Act of 1994," was introduced in Council and assigned Bill No. 10-240, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on January 18, 1995, it was assigned Act No. 10-396 and transmitted to both Houses of Congress for its review. D.C. Law 10-249 became effective on March 23, 1995.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Editor's notes. — Uniform Law: This section is based upon § 9 of the Uniform Fiduciaries Act.

CASE NOTES

Knowledge.

Notice from adverse claimant asserting by affidavit that depositor is trustee and that claimant believes such trustee is about to misappropriate the funds in account constitutes "actual knowledge" by the bank under the Uniform Fiduciary Act with respect to breach of obligation by the fiduciary. D.C. Code §§ 21-1701 et seq., 26-203. Goldstein v. Riggs Nat'l Bank, 459 F.2d 1161, 1972 U.S. App. LEXIS 11343 (C.A.D.C. 1972).

Where bank received notice from corporation that money in account belonged to the corporation, that individual in whose name account appeared was trustee of such funds, and that corporation believed the money would be misappropriated, and where bank took prompt action to secure adjudication of the conflicting claims by filing interpleader action, bank was not liable for refusing to honor checks drawn by the depositor on the account. D.C. Code § 26-203. Goldstein v. Riggs Nat'l Bank, 459 F.2d 1161, 1972 U.S. App. LEXIS 11343 (C.A.D.C. 1972).

§ 21-1709. Deposit in names of two or more trustees.

When a deposit is made in a bank in the name of two or more persons as trustees and a check is drawn upon the trust account by any trustee authorized by the others to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize the trustee to draw checks upon the trust account, and is not liable unless the circumstances be such that the action of the payee or other holder or the bank amounts to bad faith.

(Sept. 14, 1965, 79 Stat. 778, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-1709.

1973 Ed., § 21-1709.

Editor's notes. — Uniform Law: This section is based upon § 10 of the Uniform Fiduciaries Act.

§ 21-1710. Law not retroactive.

This chapter does not apply to transactions that took place prior to May 14, 1928.

(Sept. 14, 1965, 79 Stat. 778, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-1710.
1973 Ed., § 21-1710.

Editor's notes. — Uniform Law: This section is based upon § 11 of the Uniform Fiduciaries Act.

§ 21-1711. Cases not provided for by chapter.

In a case not provided for by this chapter the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments, and banking, continue to apply.

(Sept. 14, 1965, 79 Stat. 778, Pub. L. 89-183, § 1.)

Prior Codifications. — 1981 Ed., § 21-1711.
1973 Ed., § 21-1711.

Editor's notes. — Uniform Law: This section is based upon § 12 of the Uniform Fiduciaries Act.

CASE NOTES

Injunctive relief.
Codeans of law school in their representative capacities and law school students are not entitled to preliminary injunction authorizing law school to exercise complete dominion and control over law school funds, essentially the ultimate relief sought, where survival of law school would not be more certainly assured by its control of funds, university's loss of its right for any period of time to manage funds could seriously harm it, since it was on brink of bankruptcy, and even if it went bankrupt and law school failed, students' only remedy would be to seek damages for lack of accreditation, professional certification problems and delay. D.C. Code § 21-1701 et seq. In re Antioch University, 418 A.2d 105, 1980 D.C. App. LEXIS 331 (1980).

§ 21-1712. Short title.

This subchapter may be cited as the "Uniform Fiduciaries Act".

(Sept. 14, 1965, 79 Stat. 778, Pub. L. 89-183, § 1; June 16, 1989, D.C. Law 8-9, § 2(c), 36 DCR 3361.)

Prior Codifications. — 1981 Ed., § 21-1712.
1973 Ed., § 21-1712.

Legislative history of Law 8-9. — For legislative history of D.C. Law 8-9, see Historical and Statutory Notes following § 21-1721.

Editor's notes. — Uniform Law: This section is based upon § 14 of the Uniform Fiduciaries Act.

Subchapter II. General Provisions.

§ 21-1721. Investment of trust assets. [Repealed].

Repealed.

(June 16, 1989, D.C. Law 8-9, § 2(d), 36 DCR 3361; Mar. 16, 1993, D.C. Law 9-187, 39 DCR 8228; Mar. 24, 1998, D.C. Law 12-81, § 14(p), 45 DCR 745.; Mar. 10, 2004, D.C. Law 15-104, § 3(a)(2), 51 DCR 208.)

Prior Codifications. — 1981 Ed., § 21-1721.

Legislative history of Law 8-9. — Law 8-9, the "Fiduciary Investment Act of 1989," was

introduced in Council and assigned Bill No. 8-140, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 4, 1989, and April 18, 1989, respectively. Signed by the Mayor on April 27, 1989, it was assigned Act No. 8-25 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-187. — Law 9-187, the "Banking Institutions Trust Investment Act of 1992," was introduced in Council and assigned Bill No. 9-395, which was referred to the Committee on Education. The Bill was adopted on first and second readings on July 7, 1992, and October 6, 1992, respectively. Signed by the Mayor on November 2, 1992, it was assigned Act No. 9-307 and transmitted to both Houses of Congress for its review. D.C. Law 9-187 became effective on March 16, 1993.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Legislative history of Law 15-104. — Law 15-104, the "Uniform Trust Act of 2003", was introduced in Council and assigned Bill No. 15-234, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on December 18, 2003, it was assigned Act No. 15-286 and transmitted to both Houses of Congress for its review. D.C. Law 15-104 became effective on March 10, 2004.

§ 21-1722. Prohibition from exercising powers conferred upon trustee.

(a) For purposes of this section, the term:

(1) "Adverse party" shall have the same meaning as construed under § 672 of the Internal Revenue Code and the regulations promulgated thereunder.

(2) "Ascertainable standard relating to the trustee's health, education, support, and maintenance" shall have the same meaning as construed under §§ 2041 and 2514 of the Internal Revenue Code and the regulations promulgated thereunder.

(3) "Internal Revenue Code" means the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 et seq.).

(4) "Parties in interest" means:

(A) Each trustee then serving; and

(B) Each beneficiary then in existence or, if the beneficiary has not attained the age of majority or is otherwise incapacitated, the beneficiary's parent or legal representative under applicable law or the beneficiary's attorney-in-fact under a durable power of attorney.

(5) "Party who is not related or subordinate" shall have the same meaning as construed under § 672 of the Internal Revenue Code and the regulations promulgated thereunder.

(b)(1) None of the following powers conferred upon a trustee by the governing instrument may be exercised by the trustee:

(A) The power to make any discretionary distributions of either principal or income to or for the benefit of the trustee in the trustee's individual capacity, unless limited by an ascertainable standard relating to the trustee's health, education, support, and maintenance; or

(B) The power to make any discretionary distributions of either principal or income to satisfy any of the trustee's legal obligations in the trustee's individual capacity for support.

(2) If a trustee is prohibited by subsection (b)(1) of this section from exercising a power conferred upon the trustee, the trustee may nevertheless exercise the power, except that the trustee's exercise of that power shall be limited by an ascertainable standard relating to the trustee's health, education, support, and maintenance.

(c) If (1) a power described in subsection (b) of this section is exercisable in favor of a beneficiary, and (2) a power is conferred on that beneficiary to remove or replace the trustee, the beneficiary may exercise the power only to replace the trustee with a person who is either an adverse party or a party who is not related or subordinate.

(d) If the governing instrument contains a power described under subsection (b) of this section and there is no trustee who can exercise the power, the trustee then serving may appoint a special trustee who is either an adverse party or a party who is not related or subordinate to exercise the power. If the trustee fails to appoint a special trustee, upon application of any party in interest, a court may appoint a special trustee who is not disqualified under this subsection to exercise the power during the period of time that the court designates.

(e) This section shall not apply to a trust if and to the extent that:

(1) The trust qualifies for and claims the estate or gift tax marital deduction under § 2056 or § 2523 of the Internal Revenue Code;

(2) The trust is revocable or amendable at the time of the exercise of the power; or

(3) Contributions to the trust qualify for the annual exclusion under § 2503(c) of the Internal Revenue Code.

(f)(1) Subject to subsection (e) of this section, this section applies to:

(A) Any trust created under a governing instrument executed after the effective date of this section, unless the governing instrument provides expressly that this section shall not apply; and

(B) Any trust created under a governing instrument executed before the effective date of this section [April 3, 2001], unless all parties in interest elect affirmatively not to be subject to this section on or before the later of:

(i) Three years after the effective date of this section; or

(ii) Three years after the date on which the trust becomes irrevocable.

(2) Reserved.

(3) The election required under paragraph (1) of this subsection shall be made by a written declaration signed by the parties in interest and delivered to the trustee.

(Apr. 3, 2001, D.C. Law 13-234, § 2, 48 DCR 590.)

Legislative history of Law 13-234. — Law 13-234, the "Estate Tax Technical Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-497, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on December 21, 2000, it was assigned Act No. 13-511 and transmitted to both Houses of Congress for its review. D.C. Law 13-234 became effective on April 3, 2001.

CHAPTER 18. CHARITABLE AND SPLIT-INTEREST TRUSTS.

Sec.
21-1801. Charitable and split-interest trusts.

§ 21-1801. Charitable and split-interest trusts.

(a) Notwithstanding any provision to the contrary in the governing instrument or under any law applicable to the District of Columbia (except as provided in subsection (e) of this section), the governing instrument of any trust which is treated during a particular year as a private foundation described in section 509 of the Internal Revenue Code of 1954 (including any nonexempt charitable trust described in section 4947(a)(1) of the Code which is treated as a private foundation) and the governing instrument of any nonexempt split-interest trust described in section 4947(a)(2) of the Code (but only to the extent that section 508(e) of the Code is applicable to such nonexempt split-interest trust) shall be deemed during such particular year to contain all of the following provisions:

(1) The trust shall not engage in any act of self-dealing which is taxable under section 4941 of the Code.

(2) The trust shall make distributions at such time and in such manner as not to subject it to tax under section 4942 of the Code.

(3) The trust shall not retain any excess business holdings which would subject it to tax under section 4943 of the Code.

(4) The trust shall not make any investments which would subject it to tax under section 4944 of the Code.

(5) The trust shall not make any taxable expenditures which would subject it to tax under section 4945 of the Code.

With respect to any such trust created prior to January 1, 1970, subsection (a) shall apply to taxable years beginning on or after January 1, 1972.

(b) Notwithstanding any provision to the contrary in the governing instrument, the trustee or trustees of any trust described in subsection (a), other than a trust described in section 4947(a)(2) of the Code, may, without application to any court, amend the governing instrument expressly to include the provisions required by section 508(e) of the Code by executing a written amendment to the trust and delivering a copy thereof, by certified mail, to each named beneficiary, if any.

(c) Notwithstanding any provision to the contrary in the governing instrument, the trustee or trustees of any trust described in section 4947(a)(2) of the Code to which subsection (a) is applicable may, after obtaining the written consent of the creator of such trust if then living and competent to give such consent, and without application to any court, amend the governing instrument expressly to include the provisions required by section 508(e) of the Code by executing a written amendment to the trust and delivering a copy thereof by certified mail, to each named beneficiary, if any.

(d) Notwithstanding any provision to the contrary in the governing instrument, the trustee or trustees of any trust described in section 4947(a)(2) of the Code to which subsection (a) is applicable, with the consent of each beneficiary

named in such governing instrument, may, without application to any court, amend the governing instrument to conform to the provisions of section 664 of the Code by executing a written amendment to the trust for such purpose. Consent shall not be required as to individual named beneficiaries not living at the time of the amendment. In the case of any individual beneficiary not competent to give consent, the consent of a guardian, appointed by a court of competent jurisdiction, shall be treated as consent of the beneficiary. In the case of any amendment to a trust created by will, such amendment may, if provided in the amendment, be deemed to apply as of the date of death of the testator.

(e) The provisions of subsection (a) shall not apply to any trust to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the governing instrument and that such instrument may not properly be amended to conform with subsection (a).

(f) For purposes of this section, the term "trust" includes (1) any trust created by will of a resident of the District of Columbia admitted to probate in the District of Columbia, (2) any trust created by a resident of the District of Columbia and executed in the District of Columbia, (3) any trust of which the trustee or a co-trustee is a bank or trust company doing business in the District of Columbia, (4) any trust of which a majority of the trustees are resident in the District of Columbia, (5) any trust of real property located in the District of Columbia, and (6) any trust the governing instrument of which provides that it is governed by the laws of the District of Columbia.

(g) For the purposes of this section, the term "Code" means the Internal Revenue Code of 1954.

(Dec. 6, 1971, 85 Stat. 494, Pub. L. 92-177, § 1; Mar. 24, 1998, D.C. Law 12-81, § 14(q), 45 DCR 745.)

Cross references. — Corporations law, related provision, see § 29-321.01.

Uniform management of institutional funds, see § 44-1601 et seq.

Prior Codifications. — 1981 Ed., § 21-1801.

1973 Ed., § 21-1801.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

References in text. — Sections 508, 509, 664, 4941 to 4945, and 4947 of the Internal Revenue Code of 1954, referred to throughout this section, are classified to the Internal Revenue Code of 1986 as 26 U.S.C. § 508, 509, 644, 4941 to 4945, and 4947.

CHAPTER 19. ESTATES OF ABSENTEES AND ABSCONDERS. [REPEALED].

Sec.
21-1901 to 21-1915. [Repealed].

§§ 21-1901 to 21-1915. Petition for appointment of receiver, where absentees interested in property; Corporation Counsel as party; warrant to United States marshal; fees of marshal; notice of hearing to absentee and interested parties; time of hearing; publication and posting of notice; appointment of receiver; bond; finding of date of disappearance; transfer of property to receiver; schedule of property; possession, by receiver, of additional property; collection of debts; procedure where absentee left only debts due him; appointment of receiver; care, custody, sale of property; support of absentee's spouse and minor children; receiver may adjust claims of or against estate; compensation of receiver; interest of absentee in property to cease after fourteen years; distribution after fourteen years as if absentee had died intestate; time for distribution and accounting when receiver not appointed within thirteen years; construction with other laws. [Repealed].

Repealed.

(Feb. 28, 1987, D.C. Law 6-204, § 3, 34 DCR 632.)

Prior Codifications. — 1981 Ed., §§ 21-1901 to 21-1915.

CHAPTER 20. GUARDIANSHIP, PROTECTIVE PROCEEDINGS, AND DURABLE POWER OF ATTORNEY.

Subchapter I. General Provisions

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21-2001. Rule of construction; purposes.
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21-2003. Standard of proof.
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Subchapter II. Definitions

21-2011. Definitions.

Subchapter III. Scope

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Subchapter IV. Notice, Parties, and Representation in Guardianship and Protective Proceedings.

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21-2033. Guardian ad litem; counsel; visitor.
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Subchapter V. Guardians of Incapacitated Individuals.

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Subchapter VI. Protection of Property of Incapacitated, Disappeared or Detained Individuals

21-2051. Protective proceedings.
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21-2054. Procedure concerning hearing and order on original petition.
21-2055. Permissible court orders.
21-2056. Protective arrangements and single transactions authorized.
21-2057. Who may be appointed conservator; priorities.
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21-2060. Compensation and expenses.
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21-2062. Petitions for orders subsequent to appointment.
21-2063. General duty of conservator.
21-2064. Inventory and records.
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21-2066. Conservators; title by appointment.
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21-2068. Sale, encumbrance, or transaction involving conflict of interest; voidable; exceptions.
21-2069. Persons dealing with conservators; protection.
21-2070. Powers of conservator in administration.
21-2071. Distributive duties and powers of conservator.
21-2072. Enlargement or limitation of powers of conservator.
21-2073. Preservation of estate plan; right to examine.
21-2074. Personal liability of conservator.
21-2075. Termination of proceedings.
21-2076. Payment of debt and delivery of property to foreign conservator without local proceedings.
21-2077. Foreign conservator; proof of authority; bond; powers.

Subchapter VII. Durable Power of Attorney

21-2081. Definition.
21-2082. Durable power of attorney not affected by incapacity.
21-2083. Relation of attorney in fact to court-appointed fiduciary.
21-2084. Power of attorney not revoked until notice.
21-2085. Proof of continuance of durable and other powers of attorney by affidavit.

Subchapter VIII. Uniform Disclaimer of Property Interests

21-2091 to 21-2098. [Repealed].

Subchapter I. General Provisions.

§ 21-2001. Rule of construction; purposes.

(a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this chapter are to:

(1) Simplify and clarify the law concerning the affairs of missing individuals, protected individuals, and incapacitated individuals;

(2) Promote a speedy and efficient system for managing and protecting the estates of protected individuals so that assets may be preserved for application to the needs of protected individuals and their dependents; and

(3) Provide a system of general and limited guardianships for incapacitated individuals and coordinate guardianships and protective proceedings concerned with management and protection of estates of incapacitated individuals.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Cross references. — Presumption of capacity, health care decisions, see § 21-2203.

Prior Codifications. — 1981 Ed., § 21-2001.

Legislative history of Law 6-204. — Law 6-204, the "District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986," was introduced in Council and assigned Bill No. 6-7, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 18, 1986, and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act. No. 6-263 and transmitted to both Houses of Congress for its review.

Editor's notes. — Uniform Law: This section is based upon § 1-102 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

ANALYSIS

Legislative intent.
Right to remain silent.

Legislative intent.

Provisions of Guardianship, Protective Proceedings, and Durable Power of Attorney Act manifest legislative intent to confer upon trial court considerable discretion in deciding whether guardian should be removed or a conservator replaced. D.C. Code 1981, §§ 21-2001 to 21-2085. In re Langon, 663 A.2d 1248, 1995 D.C. App. LEXIS 165 (1995).

Right to remain silent.

Ward did not have substantive right to remain silent at hearing on petition to appoint guardian/conservator, despite inclusion of such language in preprinted form that provided her with notice of proceedings; no provision in Guardianship Act mentioned such right, nor was right recognized in probate rules governing such proceedings. In re Rips, 947 A.2d 1161, 2008 D.C. App. LEXIS 238 (2008).

§ 21-2002. Supplementary general principles of law applicable.

(a) Unless displaced by the particular provisions of this chapter, the principles of law and equity supplement its provisions.

(b) Nothing in this chapter shall operate to repeal, alter, or amend the rights of an individual who is the subject of a petition for civil commitment in any proceeding under Chapter 5 of Title 21, or the Mentally Retarded Citizens

Constitutional Rights and Dignity Act of 1978, effective November 8, 1978 (D.C. Law 2-137; D.C. Official Code, § 7-1301.01 et seq.).

(c) Nothing in this chapter shall affect any guardian or conservator appointed by the court upon a petition filed prior to the effective date of this chapter.

(d) An individual shall be presumed competent and to have the capacity to make legal, health-care, and all other decisions for himself or herself, unless certified otherwise under section 21-2204 or deemed incapacitated or incompetent by a court. Incapacity shall not be inferred from the fact that an individual:

(1) Has been voluntarily or involuntarily hospitalized for mental illness pursuant to Chapter 5 of Title 21; or

(2) Has mental retardation or has been determined by a court to be incompetent to refuse commitment under Chapter 13 of Title 7.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Sept. 22, 1989, D.C. Law 8-34, § 2(b), 36 DCR 5035; Oct. 22, 2008, D.C. Law 17-249, § 2(a), 55 DCR 9206.)

Prior Codifications. — 1981 Ed., § 21-2002.

Effect of amendments. — D.C. Law 17-249 added subsec. (d).

Temporary Amendment of Section. — Section 2(a) of D.C. Law 16-194 added subsec. (d) to read as follows:

"(d) An individual shall be presumed competent and to have the capacity to make legal, health-care, and all other decisions for himself or herself, unless certified otherwise under section 21-2204 or deemed incapacitated or incompetent by a court. Incapacity shall not be inferred from the fact that an individual:

"(1) Has been voluntarily or involuntarily hospitalized for mental illness pursuant to Chapter 5 of Title 21; or

"(2) Has mental retardation or has been determined by a court to be incompetent to refuse commitment under Chapter 13 of Title 7."

Section 6(b) of D.C. Law 16-194 provided that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 17-100 added subsec. (d) to read as follows:

"(d) An individual shall be presumed competent and to have the capacity to make legal, health-care, and all other decisions for himself or herself, unless certified otherwise under section 21-2204 or deemed incapacitated or incompetent by a court. Incapacity shall not be inferred from the fact that an individual:

"(1) Has been voluntarily or involuntarily hospitalized for mental illness pursuant to Chapter 5 of Title 21; or

"(2) Has mental retardation or has been determined by a court to be incompetent to refuse commitment under Chapter 13 of Title 7."

Section 6(b) of D.C. Law 17-100 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 2(a) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 2(a) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 2(a) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) amendment, see § 2(a) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Legislative history of Law 8-34. — Law 8-34, the "Guardianship Protective Proceedings, and Durable Power of Attorney Revision

Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-226, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 13, 1989, and June 27, 1989, respectively. Signed by the Mayor on July 7, 1989, it was assigned Act No. 8-59 and transmitted to both Houses of Congress for its review.

Legislative history of Law 17-249. — Law 17-249, the "Health-Care Decisions for Persons with Developmental Disabilities Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-432 which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on July 1, 2008, and July 15, 2008, respectively. Signed by the Mayor on August 4, 2008, it was assigned Act No. 17-496 and transmitted to both Houses of Congress for its review. D.C. Law 17-249 became effective on October 22, 2008.

References in text. — The "effective date of this chapter," referred to in subsection (c), is February 28, 1987.

Editor's notes. — Uniform Law: This section is based upon § 1-103 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

Legislative intent.

Provisions of Guardianship, Protective Proceedings, and Durable Power of Attorney Act manifest legislative intent to confer upon trial court considerable discretion in deciding whether guardian should be removed or a conservator replaced. D.C. Code 1981, §§ 21-2001 to 21-2085. In re Langon, 663 A.2d 1248, 1995 D.C. App. LEXIS 165 (1995).

§ 21-2003. Standard of proof.

In proceedings under this chapter for the appointment of a guardian or conservator, either general or limited, or subsequent proceedings in which the powers of a guardian or conservator are sought to be enlarged, the petitioner or moving party shall present clear and convincing evidence that the appointment or enlargement of powers is warranted.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2003.

6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

§ 21-2004. Effect of a finding of incapacity.

A finding under this chapter that an individual is incapacitated shall not constitute a finding of legal incompetence. An individual found to be incapacitated shall retain all legal rights and abilities other than those expressly limited or curtailed in the order of appointment of a guardian or in a protective proceeding, or subsequent order of the court.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2004.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Subchapter II. Definitions.

§ 21-2011. Definitions.

For the purposes of this chapter, the term:

(1) "Best interests" means promoting personal well-being by assessing:

(A) The reason for the proposed action, its risks and benefits, and any alternatives considered and rejected; and

(B) The least intrusive, least restrictive, and most normalizing course of action possible to provide for the needs of the individual.

(1A) "Claims" in respect to a protected individual, means liabilities of the protected individual, whether arising in contract, tort, or otherwise, and liabilities of the estate that arise at or after the appointment of a conservator, including expenses of administration.

(2) "Court" means the Superior Court of the District of Columbia.

(3) "Conservator" means a person who is appointed by a court to manage the estate of a protected individual and includes a limited conservator described in section 21-2066(a).

(4) "Counsel" means an attorney admitted to the practice of law in the District.

(5) "District" means District of Columbia.

(5A) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(5B) "Domestic partnership" shall have the same meaning as provided in § 32-701(4).

(5C) "Emergency care" means immediate treatment, including diagnostic treatment, provided in response to a sudden and acute medical crisis in order to avoid injury, extreme pain, impairment, or death.

(6) "Estate" means the property of the individual whose affairs are subject to this chapter.

(7) "Examiner" means an individual qualified by training or experience in the diagnosis, care, or treatment of the causes and conditions giving rise to the alleged incapacity, such as a gerontologist, psychiatrist, or qualified mental retardation professional.

(8) "Guardian" means a person who has qualified as a guardian of an incapacitated individual pursuant to court appointment, not including a guardian ad litem, but including:

(A) A temporary guardian appointed as described in section 21-2046 for a finite period of time to serve as:

(i) An emergency guardian whose authority may not extend beyond 21 days and who may exercise any powers granted by court order and not prohibited by law;

(ii) A health-care guardian whose authority is granted for up to 90 days and may be extended for up to an additional 90 days to provide substituted consent in accordance with section 21-2210 for an individual certified as incapacitated for a health-care decision; or

(iii) A provisional guardian whose authority is granted for a specified period not to exceed 6 months, upon the court's finding that any guardian is not effectively performing duties and that the welfare of the incapacitated individual requires immediate action;

(B) A general guardian not limited by the court in scope as described in section 21-2044(c) or in time as described in section 21-2046; and

(C) A limited guardian whose powers are limited by the court as described in section 21-2044(c) and who is appointed for a finite period of time as described in section 21-2046 or for an indeterminate period of time.

(9) "Guardian ad litem" means an individual appointed by the court to assist the subject of an intervention proceeding to determine his or her interests in regard to the guardianship or protective proceeding or to make that determination if the subject of the intervention proceeding is unconscious or otherwise wholly incapable of determining his or her interest in the proceeding even with assistance.

(10) "Habilitation" means the process by which an individual is assisted to acquire and maintain those life skills that enable him or her to cope more effectively with the demands of his or her own person and of his or her own environment and to raise the level of his or her physical, intellectual, social, emotional, and economic efficiency.

(11) "Incapacitated individual" means an adult whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that he or she lacks the capacity to manage all or some of his or her financial resources or to meet all or some essential requirements for his or her physical health, safety, habilitation, or therapeutic needs without court-ordered assistance or the appointment of a guardian or conservator.

(11A) "Incapacitated individual for health-care decisions" means an adult individual who lacks sufficient mental capacity to:

(A) Appreciate the nature and implications of a health-care decision;

(B) Make a choice regarding the alternatives presented; or

(C) Communicate that choice in an unambiguous manner.

(12) "Intervention proceeding" means any proceeding under this chapter.

(13) "Lease" means an oil, gas, or other mineral lease.

(14) "Letters" means letters of guardianship and letters of conservatorship.

(15) "Manage financial resources" means those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.

(16) "Meet essential requirements for physical health or safety" means those actions necessary to provide health care, food, shelter, clothing, personal hygiene, and other care without which serious physical injury or illness is more likely than not to occur.

(17) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as collateral.

(18) "Organization" includes a corporation, business trust, estate, trust, partnership, association, 2 or more persons having a joint or common interest, government, governmental subdivision or agency, or any other legal entity.

(19) "Person" means an individual or an organization.

(20) "Petition" means a written request to the court for an order after notice.

(21) "Property" means anything that may be the subject of ownership, and includes both real and personal property and any interest in real or personal property.

(22) "Protected individual" means an individual for whom a conservator has been appointed or other protective order has been made as provided in sections 21-2055 and 21-2056.

(23) "Protective proceeding" means a proceeding under the provisions of subchapter VI of this chapter.

(24) "Qualified mental retardation professional" means:

(A) A psychologist with at least a master's degree from an accredited program and with specialized training or 1 year of experience in mental retardation;

(B) A physician licensed to practice medicine in the District and with specialized training in mental retardation or with 1 year of experience in treating individuals with mental retardation;

(C) An educator with a degree in education from an accredited program and with specialized training or 1 year of experience in working with individuals with mental retardation;

(D) A social worker with:

(i) A master's degree from a school of social work accredited by the Council on Social Work Education (New York, New York), and with specialized training in mental retardation or with 1 year of experience in working with individuals with mental retardation; or

(ii) A bachelor's degree from an undergraduate social work program accredited by the Council on Social Work Education who is currently working and continues to work under the supervision of a social worker as defined in subparagraph (D)(i) and who has specialized training in mental retardation or 1 year of experience in working with individuals with mental retardation;

(E) A rehabilitation counselor who is certified by the Commission on Rehabilitation Counselor Certification (Chicago, Illinois) and who has specialized training in mental retardation or 1 year of experience in working with individuals with mental retardation;

(F) A physical or occupational therapist with a bachelor's degree from an accredited program in physical or occupational therapy and who has specialized training or 1 year of experience in working with individuals with mental retardation; or

(G) A therapeutic recreation specialist who is a graduate of an accredited program and who has specialized training or 1 year of experience in working with individuals with mental retardation.

(25) "Security" means any:

(A) Note;

(B) Stock;

(C) Treasury stock;

(D) Bond debenture;

(E) Evidence of indebtedness;

(F) Certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;

(G) Collateral trust certificate;

(H) Transferable share;

(I) Voting trust certificate; or

(J) Interest or instrument commonly known as a security, certificate of interest or participation, temporary or interim certificate, receipt, certificate of deposit for, or any warrant or right to subscribe to or purchase any of the foregoing.

(25A) "Substituted judgment" means making a decision that conforms as closely as possible with the decision that the individual would have made, based upon the knowledge of the beliefs, values, and preferences of the individual.

(26) "Visitor" means a person appointed in a guardianship or protective proceeding who is an officer, employee, or special appointee of the court and who has no personal interest in the proceeding.

(27) "Ward" means an individual for whom a guardian has been appointed.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Mar. 24, 1998, D.C. Law 12-81, § 14(r), 45 DCR 745; Apr. 4, 2006, D.C. Law 16-79, § 7(a), 53 DCR 1035; Apr. 24, 2007, D.C. Law 16-305, § 35(c)(1), 53 DCR 6198; Oct. 22, 2008, D.C. Law 17-249, § 2(b), 55 DCR)

Prior Codifications. — 1981 Ed., § 21-2011.

Effect of amendments. — D.C. Law 16-79 added pars. (5A) and (5B).

D.C. Law 16-305, in par. (24), substituted "individuals with mental retardation" for "mentally retarded individuals".

D.C. Law 17-249 redesignated former par. (1) as par. (1A); added pars. (1), (5C), (11A), (25A); and rewrote par. (8), which had read as follows: "(8) 'Guardian' means a person who has qualified as a guardian of an incapacitated individual pursuant to court appointment and includes a limited guardian as described in section 21-2044(c), but excludes one who is merely a guardian ad litem."

Temporary Amendment of Section. — Section 2(a) of D.C. Law 12-249 added (5A) to read as follows: For the purposes of this chapter, the term:

"(5A) "Emergency care" means immediate treatment, including diagnostic treatment, provided in response to a sudden, acute, and unanticipated medical crisis in order to avoid injury, extreme pain, impairment, or death."

Section 5(b) of D.C. Law 12-249 provided that this act shall expire after 225 days of its having taken effect.

Section 2 (a) of D.C. Law 13-88 added a definition of emergency care.

Section 5(b) of D.C. Law 13-88 provided that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 13-221 added par. (5A) which defined "emergency care".

Section 5(b) of D.C. Law 13-221 provided that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 14-64 added par. (5A) to read as follows:

"(5A) 'Emergency care' means immediate treatment, including diagnostic treatment, provided in response to a sudden, acute, and unanticipated medical crisis in order to avoid injury, extreme pain, impairment, or death."

Section 5(b) of D.C. Law 14-64 provided that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 14-241 added par. (5A) to read as follows:

"(5A) 'Emergency care' means immediate treatment, including diagnostic treatment, provided in response to a sudden, acute, and unanticipated medical crisis in order to avoid injury, extreme pain, impairment, or death."

Section 5(b) of D.C. Law 14-241 provided that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 15-98 added par. (5A) to read as follows:

"(5A) 'Emergency care' means immediate treatment, including diagnostic treatment, provided in response to a sudden, acute, and unanticipated medical crisis in order to avoid injury, extreme pain, impairment, or death."

Section 5(b) of D.C. Law 15-98 provided that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 15-245 added par. (5A) to read as follows:

"(5A) 'Emergency care' means immediate treatment, including diagnostic treatment, provided in response to a sudden, acute, and unanticipated medical crisis in order to avoid injury, extreme pain, impairment, or death.".

Section 5(b) of D.C. Law 15-245 provided that

the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 16-46 added par. (5A) to read as follows:

"(5A) 'Emergency care' means immediate treatment, including diagnostic treatment, provided in response to a sudden, acute, and unanticipated medical crisis in order to avoid injury, extreme pain, impairment, or death."

Section 6(b) of D.C. Law 16-46 provided that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 16-194 redesignated par. (1) as par. (1A), added pars. (1), (5C), (11A), and (25A), and amended par. (8) to read as follows:

"(1) 'Best interests' means promoting personal well-being by assessing:

"(A) The reason for the proposed action, its risks and benefits, and any alternatives considered and rejected; and

"(B) The least intrusive, least restrictive, and most normalizing course of action possible to provide for the needs of the individual."

"(5C) 'Emergency care' means immediate treatment, including diagnostic treatment, provided in response to a sudden, acute, and unanticipated medical crisis in order to avoid injury, extreme pain, impairment, or death."

"(8) 'Guardian' means a person other than a guardian ad litem who has qualified as a guardian of an incapacitated individual pursuant to court appointment, and includes:

"(A) A limited guardian whose powers are limited by the court as described in section 21-2044(c);

"(B) A temporary guardian appointed as described in section 21-2046 for a finite period of time to serve as:

"(i) An emergency guardian whose authority may not extend beyond 15 days and who may exercise any powers granted by court order and not prohibited by law;

"(ii) A health-care guardian whose authority is granted for up to 90 days and may be extended for up to an additional 90 days to provide substituted consent in accordance with section 21-2210 for an individual certified as incapacitated for a health-care decision; or

"(iii) A provisional guardian whose authority is granted for a specified period not to exceed 6 months, upon the court's finding that any guardian is not effectively performing duties and that the welfare of the incapacitated individual requires immediate action; and

"(C) A general guardian not limited by the court in scope as described in section 21-2044(c) or in time as described in section

Emergency legislation. — For temporary amendment of section, see § 2(a) of the Mentally Retarded Citizens Substituted Consent for Health Care Decisions Emergency Amendment Act of 1998 (D.C. Act 12-554, December 30, 1998, 45 DCR 566).

For temporary amendment of section, see § 2(a) of the Mentally Retarded Citizens Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-56, April 16, 1999, 46 DCR 4289).

For temporary (90-day) amendment of section, see § 2(a) of the Mentally Retarded Citizens Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-56, April 16, 1999, 46 DCR 3858).

For temporary (90-day) amendment of section, see § 2(a) of the Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 1999 (D.C. Act 13-202, December 1, 1999, 47 DCR 134).

For temporary (90-day) amendment of section, see § 2(a) of the Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-285, March 7, 2000, 47 DCR 2033).

For temporary (90-day) amendment of section, see § 2(a) of the Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-455, November 7, 2000, 47 DCR 9415).

For temporary (90 day) amendment of section, see § 2(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-3, February 13, 2001, 48 DCR 2251).

For temporary (90 day) amendment of section, see § 2 of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2001 (D.C. Act 14-143, October 23, 2001, 48 DCR 9944).

For temporary (90 day) amendment of section, see § 2(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-246, January 28, 2002, 49 DCR 1040).

For temporary (90 day) amendment of section, see § 2(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2002 (D.C. Act 14-514, October 23, 2002, 49 DCR 10480).

For temporary (90 day) amendment of section, see § 2(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Second Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-602, January 7, 2003, 50 DCR 684).

For temporary (90 day) amendment of section, see § 2(a) of Citizens with Mental Retar-

dation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2003 (D.C. Act 15-234, November 25, 2003, 50 DCR 10734).

For temporary (90 day) amendment of section, see § 2(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-359, February 19, 2004, 51 DCR 2578).

For temporary (90 day) amendment of section, see § 2(a) of Citizens with Mental Retardation Substituted for Health Care Decisions Emergency Amendment Act of 2004 (D.C. Act 15-558, October 26, 2004, 51 DCR 10375).

For temporary (90 day) amendment of section, see § 2(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-6, January 19, 2005, 52 DCR 2683).

For temporary (90 day) amendment of section, see § 2(a) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005 (D.C. Act 16-190, October 28, 2005, 52 DCR 10021).

For temporary (90 day) amendment of section, see § 2(a) of Health-Care Decisions for Persons with Mental Retardation and Development Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-262, January 26, 2006, 53 DCR 795).

For temporary (90 day) amendment of section, see § 2(b) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 2(b) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 2(b) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 2(b) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) amendment, see § 2(b) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Legislative history of Law 12-249. — Law 12-249, the "Mentally Retarded Citizens Substitute Consent for Health Care Decisions and Emergency Care Definition Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-757. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 24, 1998, it was assigned Act No. 12-588 and transmitted to both Houses of Congress for its review. D.C. Law 12-249 became effective on April 20, 1999.

Legislative history of Law 13-221. — Law 13-221, the "Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Act of 2000", was introduced in Council and assigned Bill No. 13-856. The Bill was adopted on first and second readings on October 3, 2000, and November 8, 2000, respectively. Signed by the Mayor on November 29, 2000, it was assigned Act No. 13-480 and transmitted to both Houses of Congress for its review. D.C. Law 13-221 became effective on April 3, 2001.

Legislative history of Law 14-64. — Law 14-64, the "Citizens With Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2001", was introduced in Council and assigned Bill No. 14-357, which was retained by Council. The Bill was adopted on first and second readings on October 2, 2001, and November 6, 2001, respectively. Signed by the Mayor on November 19, 2001, it was assigned Act No. 14-169 and transmitted to both Houses of Congress for its review. D.C. Law 14-64 became effective on February 27, 2002.

Legislative history of Law 14-241. — Law 14-241, the "Citizens with Mental Health Retardation Substituted Consent for Health Care decisions Temporary Amendment Act of 2002", was introduced in Council and assigned Bill No. 14-871, and was retained by Council. The Bill was adopted on first and second readings on October 1, 2002, and November 7, 2002, respectively. Signed by the Mayor on November 26, 2002, it was assigned Act No. 14-522 and transmitted to both Houses of Congress for its

review. D.C. Law 14-241 became effective on March

CASE NOTES

ANALYSIS

Estate.
Findings.
Guardian ad litem.
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Right to counsel.
Sufficiency of evidence.

Estate.

"Estate" includes noncash assets. In re Mitchell, 121 WLR 541 (Super. Ct. 1993).

Findings.

Record supported trial court's finding, for purpose of deciding whether to allow adult to be represented by a particular attorney in general proceeding on whether adult was an incapacitated individual and whether a conservator of his estate should be appointed, that attorney had a conflict of interest; evidence showed that adult's mother consulted with attorney from time to time in an effort to secure additional funds or purchases from guardianship estate, that a lawyer with attorney's firm represented mother in a complaint seeking to remove guardian, and that mother, in complaint, averred that her family had requested that guardianship be managed by attorney's firm. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Record supported trial court's findings, for purpose of deciding whether to allow adult to be represented by a particular attorney in general proceeding on whether adult was an incapacitated individual and whether a conservator of his estate should be appointed, that adult had not selected attorney as his attorney, that attorney was actually his parents' attorney, that he signed no retainer agreement for attorney's services, that he did not know what a living trust was, as one document that attorney allegedly prepared for him, and that he did not have an ability to secure an attorney on his own; trial looked at, inter alia, adult's testimony and school records. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Guardian ad litem.

Attorney appointed as guardian ad litem for plaintiff in civil action alleging medical malpractice and assault and battery was not entitled to compensation under Guardianship Fund for ascertaining information concerning plaintiff's mental competency and for providing legal services to plaintiff in civil action; Guardianship Act did not authorize appointment of guardian ad litem for such purposes, superior court, which was not acting through its probate division, did not purport to appoint attorney pursuant to Act's procedures, and attorney was not providing services in a protective arrangement. Sullivan v. District of Columbia, 829 A.2d 221, 2003 D.C. App. LEXIS 477 (2003).

Intervention proceeding.

Challenge by decedent's grandson, in probate case, to decedent's will and to an inter vivos trust which decedent had established, was not an "intervention proceeding," within meaning of District of Columbia probate rule permitting appeal to be taken from any order limiting the rights of fiduciaries; while personal representative and trustee of decedent's estate were fiduciaries, the probate case was not filed under District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act. In re Estate of Corsetti, 928 A.2d 691, 2007 D.C. App. LEXIS 464 (2007).

Procedure.

To achieve the paramount objective of the Guardianship Act, which is remedial legislation under which the trial court acts in a parens patriae role to protect the best interests of the incapacitated individual before it, the trial court ought not to be passive in the face of what it recognizes is a deficient presentation of evidence. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Adult did not show that trial court was biased in general proceeding on whether adult was an incapacitated individual and whether a conservator of his estate should be appointed, even though adult asserted that trial court questioned his witnesses to a greater extent than petitioner's witness and made certain evidentiary rulings, factual findings, and legal conclusions with which he disagreed; adult did not claim that trial court's actions derived from any source outside its participation in case. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Trial court did not deprive adult of a meaningful opportunity to present his case in general proceeding on whether adult was an incapacitated individual and whether a conservator of his estate should be appointed, even though trial court declined to allow adult to be represented by a private attorney rather than attorney appointed by court; appointed counsel zealously opposed conservatorship petition, prevailed on issue of adult's right to remain silent, cross examined witnesses, and insisted on cross examining court-appointed examiner

after he filed his report. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Right to counsel.

Trial court did not deny adult's statutory right to counsel of his choice in general proceeding on whether he was an incapacitated individual and whether a conservator of his estate should be appointed because he had property that would be wasted or dissipated unless property management was provided, even though attorney, on day of scheduled initial hearing, filed an application for admission pro hac vice; attorney's application stated that it was for limited purpose of asking trial court to transfer adult's estate to Maryland, no attorney purporting to be retained by adult ever filed a notice of appearance required by rule, and such notice was not provided by certain other representations. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Sufficiency of evidence.

Evidence other than adult's testimony was sufficient to establish a prima facie showing that adult was an incapacitated individual who required a conservator to protect his property, and thus adult was not prejudiced by error in trial court's decision that adult had to testify when called by petitioner in her case in chief, which violated adult's right to remain silent as stated on forms that adult received; petitioner testified that assets to which adult was entitled consisted of investments, bank accounts, savings bonds, and income in various amounts, and court-appointed examiner testified that adult functioned academically at a second-grade level and would not be able to manage his own substantial funds. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Subchapter III. Scope.

§ 21-2021. Territorial application.

Except as otherwise provided in this chapter, this chapter applies to:

(1) Affairs and estates of a disappeared individual who is domiciled in the District and an individual to be protected who is domiciled in the District;

(2) Property located in the District of a non-domiciliary who is a disappeared individual or an individual to be protected;

(3) Property coming into the control of a guardian or conservator who is subject to the laws of the District; and

(4) An incapacitated individual in the District.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2021.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 1-301 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

Jurisdiction.

Trial court acted within its discretion in conservatorship proceeding in denying without prejudice adult's motion to transfer his assets to Maryland, where he resided; adult's assets were already under jurisdiction of trial court, had been for some 13 years, and would remain so pending approval of final account, and trial court did not have an adequate factual basis for permitting transfer of adult's funds to Maryland at that time. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

District of Columbia trial court had jurisdiction, under Guardianship Act, to appoint a guardian for Nigerian citizen, although she was not domiciled in the District, where she was present in a hospital in the District. In re Uwazih, 822 A.2d 1074, 2003 D.C. App. LEXIS 274 (2003).

District of Columbia trial court lacked juris-

diction to appoint conservator for Nigerian citizen, where she owned no property in the District. In re Uwazih, 822 A.2d 1074, 2003 D.C. App. LEXIS 274 (2003).

Probate court in District of Columbia had requisite personal jurisdiction over patient to appoint guardian or conservator for her, even after patient's niece, who had a health care proxy, moved patient to New York; patient was unquestionably a domiciliary of District at time she was hospitalized and petition was filed and served on her, and there was no evidence that patient intended to forsake District and resettle in New York. In re Orshansky, 804 A.2d 1077, 2002 D.C. App. LEXIS 488 (2002).

§ 21-2022. Practice in court.

Unless specifically provided to the contrary in this chapter or inconsistent with its provisions, the rules of the court, including the rules concerning vacation of orders and appellate review, govern proceedings under this chapter.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2022.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 1-304 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

§ 21-2023. Jury trial. [Repealed].

Repealed.

(Sept. 22, 1989, D.C. Law 8-34, § 2(d), 36 DCR 5035.)

Prior Codifications. — 1981 Ed., § 21-2023.

Legislative history of Law 8-34. — For legislative history of D.C. Law 8-34, see Historical and Statutory Notes following § 21-2002.

§ 21-2024. Appeals.

Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments, and power of the appellate court, is governed by the rules applicable to the appeals to the District of Columbia Court of Appeals.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2024.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 1-307 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

Subchapter IV. Notice, Parties, and Representation in Guardianship and Protective Proceedings.

§ 21-2031. Notice; method, contents, and time of giving.

(a) If notice of a hearing on any petition is required, other than a notice meeting specific notice requirements otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to the person to be notified or to the attorney, if the person has appeared by attorney or requested that notice be sent to an attorney.

(b) Notice must be given:

(1) By mailing a copy of the notice at least 17 days before the time set for the hearing by certified or ordinary first-class mail, addressed to the person being notified, using the post office address given in the request for notice, if any, or to the person's office or place of residence, if known;

(2) By personally delivering a copy to the person being notified at least 14 days before the time set for the hearing; or

(3) In the case of an individual who has disappeared, has been detained by a foreign power, or is being held by someone other than a foreign power, by publishing, at least once a week for 3 consecutive weeks, a copy of the notice in a newspaper of general circulation in the District, the first publication of which is at least 40 days before the date set for the hearing.

(c) The court, for good cause shown, may provide for a different method or time of giving notice for any hearing.

(d) Proof of the giving of notice must be made by affidavit not later than the date of the hearing specified in the proceeding.

(e) The contents of the notice required in any proceeding under this chapter shall be as prescribed by court rule. Each notice shall explain the purposes, procedure, and significance of the pleading or hearing that the notice concerns, as well as the rights to which the parties are entitled.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Sept. 22, 1989, D.C. Law 8-34, § 2(e), 36 DCR 5035.)

Prior Codifications. — 1981 Ed., § 21-2031.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Legislative history of Law 8-34. — For legislative history of D.C. Law 8-34, see Historical and Statutory Notes following § 21-2002.

Editor's notes. — Uniform Law: This section is based upon § 1-401 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

ANALYSIS

Right to remain silent.
Sanction orders.

Right to remain silent.

Evidence other than adult's testimony was sufficient to establish a prima facie showing that adult was an incapacitated individual who required a conservator to protect his property, and thus adult was not prejudiced by error in trial court's decision that adult had to testify when called by petitioner in her case in chief, which violated adult's right to remain silent as stated on forms that adult received; petitioner testified that assets to which adult was entitled

consisted of investments, bank accounts, savings bonds, and income in various amounts, and court-appointed examiner testified that adult functioned academically at a second-grade level and would not be able to manage his own substantial funds. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Sanction orders.

Sanction order that former guardian/conservator pay attorney fees of successor guardian violated due process, in that order followed auditor-master's recommendation that court enter judgment against former guardian/conservator for balance that was unaccounted for with respect to ward's estate, which amount did not include successor guardian/conservator's attorney fees, and therefore, former guardian/conservator did not receive notice that court would consider requiring her to pay successor guardian/conservator's attorney fees, and there was not clear evidence of culpability on part of former guardian/conservator. In re Randolph-Bray, 942 A.2d 1142, 2008 D.C. App. LEXIS 78 (2008).

§ 21-2032. Notice; waiver.

A person, including a guardian, guardian ad litem, conservator, or other fiduciary, may waive notice by a signed writing. An individual for whom a guardianship or other protective order is sought, a ward, or a protected individual may not waive notice.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2032.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 1-402 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

§ 21-2033. Guardian ad litem; counsel; visitor.

(a) At any point in a proceeding, a court may appoint a guardian ad litem to prosecute or defend the interest of individuals in any legal proceeding if the court determines that representation of the interest otherwise would be inadequate. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several individuals or interests. In addition, a guardian ad litem may be appointed by the court to assist the subject of an intervention proceeding to determine his or her interests in regard to the guardianship or protective proceeding or to make that determination if the subject of the proceeding is unconscious or otherwise wholly incapable of determining his or her interests in that proceeding even with assistance. In either case the guardian ad litem shall not serve as an independent finder of fact, investigator, ombudsman, or other neutral party in the proceeding. The court, as a part of the record of the proceeding, shall set out its reasons for appointing a guardian ad litem and his or her specific duties.

(b) The duty of counsel for the subject of a guardianship or protective proceeding is to represent zealously that individual's legitimate interests. At a minimum, this shall include:

(1) Personal interviews with the subject of the intervention proceeding;

(2) Explaining to the subject of the intervention proceeding, in the language, mode of communication, and terms that the individual is most likely to understand, the nature and possible consequences of the proceeding, the

alternatives that are available, and the rights to which the individual is entitled; and

(3) Securing and presenting evidence and testimony and offering arguments to protect the rights of the subject of the guardianship or protective proceeding and further that individual's interests.

(c) Visitors appointed by the court in guardianship or protective proceedings shall interview the subject of the proceeding, the person who has filed the petition initiating the proceeding, and any person nominated to serve as guardian or conservator. The visitor shall also visit the present place of abode of the subject of the proceeding and the place it is proposed that the individual will be detained or reside if the appointment is made. The visitor shall submit a written report to the court. If a person has been nominated for appointment as a guardian or conservator, the visitor shall investigate whether a conflict or potential conflict of interest should preclude the appointment. If no person is nominated, the visitor shall make a nomination in his or her report to the court.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2033.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 1-403 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

ANALYSIS

Compensation.
Conflicts of interest.
Criminal proceedings.
Legislative intent.
Powers and duties of court.

Compensation.

Remand was required for trial court to reconsider its denial of payment for adult's expert witness in conservatorship proceeding from adult's estate funds, even though trial court stated that it would deny compensation to expert because adult's mother had retained his services and, therefore, should be responsible for payment; adult's attorney called expert as a witness in support of case that she presented on adult's behalf, attorney had a responsibility to represent adult zealously and apparently thought it necessary to call expert, and it was not clear that trial court considered any request for compensation in that light. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Attorney appointed as guardian ad litem for plaintiff in civil action alleging medical malpractice and assault and battery was not entitled to compensation under Guardianship Fund for ascertaining information concerning plaintiff's mental competency and for providing legal services to plaintiff in civil action; Guardianship Act did not authorize appointment of guardian ad litem for such purposes, superior court, which was not acting through its probate division, did not purport to appoint attorney pursuant to Act's procedures, and attorney was not providing services in a protective arrangement. Sullivan v. District of Columbia, 829 A.2d 221, 2003 D.C. App. LEXIS 477 (2003).

Conflicts of interest.

Error arising when trial judge allowed child's guardian ad litem to serve dual roles as attorney and witness at show cause hearing on adoption petition did not result in miscarriage of justice, where judge did not uncritically adopt lay opinions of guardian ad litem, but instead independently evaluated evidence, weighed options for child, and reached his own conclusion that adoption was in child's best interest. D.C. Code 1981, §§ 16-309, 16-309(b)(3), 16-918(b), 16-2304(b)(1); Rules of Prof.Conduct, Rule 3.7. S.S. v. D.M., 597 A.2d 870, 1991 D.C. App. LEXIS 272 (1991).

Criminal proceedings.

Where a criminal defendant charged with drug-related offenses does not realize the seri-

ousness of the penalties he faces, that does not mean the intervention system is appropriately invoked, since he may have an insanity defense which ought to be raised in his criminal proceeding, and a guardian ad litem may be sought in the civil forfeiture case. With those safeguards available, the intervention system is surplusage. In re Estate of Burch, 120 WLR 2701 (Super. Ct. 1992).

Legislative intent.

Provisions of Guardianship, Protective Proceedings, and Durable Power of Attorney Act manifest legislative intent to confer upon trial court considerable discretion in deciding whether guardian should be removed or a conservator replaced. D.C. Code 1981, §§ 21-2001 to 21-2085. In re Langon, 663 A.2d 1248, 1995 D.C. App. LEXIS 165 (1995).

Powers and duties of court.

Trial court did not deprive adult of a meaningful opportunity to present his case in general proceeding on whether adult was an incapacitated individual and whether a conservator of his estate should be appointed, even though trial court declined to allow adult to be represented by a private attorney rather than attorney appointed by court; appointed counsel zealously opposed conservatorship petition, prevailed on issue of adult's right to remain silent, cross examined witnesses, and insisted on cross examining court-appointed examiner after he filed his report. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Probate court abused its discretion by appointing conservator and guardian for hospital patient; little if any effort was made to ascertain patient's wishes, no guardian ad litem was appointed to assist her, neither her own counsel nor appointed conservator undertook to convey patient's desires to the court, and entire proceeding was conducted in patient's absence. In re Orshansky, 804 A.2d 1077, 2002 D.C. App. LEXIS 488 (2002).

Probate court lacked sound factual foundation for selecting guardian for patient, for ordering that patient be returned from New York to District of Columbia for care, and for concluding that conservator was required to protect patient's assets and provide money for her support; court did not appoint either an examiner or a visitor to evaluate patient's condition and needs, and parties made little if any effort to furnish the necessary information through expert testimony and witnesses with personal knowledge of material facts. In re Orshansky, 804 A.2d 1077, 2002 D.C. App. LEXIS 488 (2002).

Guardian ad litem's recommendation as to conservator of estate and person of ward is not binding on court; duty of deciding what arrangement is in best interest of ward remains with court at all times. D.C. Code 1981, § 21-2033(a). Mayes v. Sanford, 641 A.2d 855, 1994 D.C. App. LEXIS 75 (1994), writ of certiorari denied by 513 U.S. 946, 115 S. Ct. 356, 130 L. Ed. 2d 311, 1994 U.S. LEXIS 7356, 63 U.S.L.W. 3311 (1994).

§ 21-2034. Request for notice; interested person.

Upon payment of any required fee, an interested person who desires to be notified before any order is made in any proceeding under this chapter may file a request for notice with the clerk of the court in which the proceeding is pending. The clerk shall mail a copy of the request to the guardian and to the conservator if either has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and the address of that person or an attorney to whom notice is to be given. The request is effective only as to proceedings occurring after the filing. Any governmental agency paying or planning to pay benefits to the individual to be protected is an interested person in protective proceedings.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2034.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 1-404 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

Subchapter V. Guardians of Incapacitated Individuals.

§ 21-2041. Procedure for court-appointment of a guardian of an incapacitated individual.

(a) An incapacitated individual or any person interested in the welfare of the incapacitated individual may petition for appointment of a guardian, either limited, temporary, or general.

(b) The petition shall state the name, address, and interest of the petitioner, state the name, age, residence, and address of the individual for whom a guardian is sought, and set forth the reasons for which the guardianship is sought with specific particularity so as to enable the court to determine what class of examiner and visitor should examine the person alleged to be incapacitated.

(c) The petition shall be served upon the subject of the petition, by first class mail, within 3 days of its filing. Proof of service is to be by certificate of service.

(d) After the filing of a petition, the court shall set a date for hearing on the issue of incapacity so that notice may be given as required by section 21-2042 and, unless the allegedly incapacitated individual is represented by counsel, the court shall appoint an attorney to represent the individual in the proceeding. The court shall appoint an appropriately qualified examiner who shall submit a report in writing to the court. The individual alleged to be incapacitated also shall be interviewed by a visitor appointed by the court. The examiner and the visitor shall be separate persons. The court may waive the appointment of a visitor and, where a report has been submitted in writing to the court for the allegedly incapacitated individual, the court may waive the appointment of an examiner. The court shall waive, absent good cause shown, the appointments of a visitor and examiner if the petition seeks appointment of an emergency guardian or a health-care guardian and the petition is supported by the certification of incapacity made pursuant to section 21-2204.

(e) The court may utilize the services of additional visitors to evaluate the condition of the allegedly incapacitated individual and to make appropriate recommendations to the court.

(f) In the case of an individual whose incapacity is alleged to arise out of mental retardation, preference is for the appointment of an examiner and visitor who are qualified mental retardation professionals and who can collectively give a complete social, psychological, and medical evaluation of the individual. The court may waive the appointment of a visitor and, where a current individual habilitation plan prepared pursuant to section 7-1304.03 is submitted to the court, the court may waive the appointment of an examiner.

(g) For any individual alleged to be incapacitated, any current social, psychological, medical, or other evaluation used for diagnostic purposes or in the development of a current plan of treatment or any current plan of treatment shall be presented as evidence to the court. For an individual alleged to be incapacitated for health-care decisions, the certification of incapacity made pursuant to section 21-2204 shall be presented as evidence to the court.

(h) An individual alleged to be incapacitated shall be present at the hearing unless good cause is shown for the absence. The individual shall be represented by counsel and is entitled to present evidence and to cross-examine witnesses, including any court-appointed examiner or visitor. The hearing may be closed if the individual alleged to be incapacitated or counsel for the individual so requests.

(i) Any person may apply for permission to participate in the proceeding, and the court may grant the request, with or without hearing, upon determining that the best interest of the alleged incapacitated individual will be served. The court may attach appropriate conditions to the permission.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Sept. 22, 1989, D.C. Law 8-34, § 2(f)-(g), 36 DCR 5035; Apr. 24, 2007, D.C. Law 16-305, § 35(c)(2), 53 DCR 6198; Oct. 22, 2008, D.C. Law 17-249, § 2(c), 55 DCR 9206.)

Prior Codifications. — 1981 Ed., § 21-2041.

Effect of amendments. — D.C. Law 16-305, in subsec. (f), substituted "individual alleged to have mental retardation" for "alleged mentally retarded individual".

D.C. Law 17-249, in subsec. (a), inserted ", temporary," following "limited"; and rewrote subsecs. (d), (f), and (g).

Temporary Amendment of Section. — Section 2(c) of D.C. Law 16-194, in subsec. (a), substituted "limited, temporary," for "limited"; in subsec. (d) added the following sentence at the end: "The court shall waive the appointments of a visitor and examiner if the petition seeks appointment of an emergency guardian or a health-care guardian and the petition is supported by the certification of incapacity made pursuant to section 21-2204."; in subsec. (f) struck the second and third sentences and inserted the following sentence in their place: "The court may waive the appointment of a visitor and, where a current individual habilitation plan prepared pursuant to section 7-1304.03 is submitted to the court, the court may waive the appointment of an examiner."; and in subsec. (g), substituted "individual" for "other individual", and added the following sentence at the end: "For an individual alleged to be incapacitated for health-care decisions, the certification of incapacity made pursuant to section 21-2204 shall be presented as evidence to the court.".

Section 6(b) of D.C. Law 16-194 provided that the act shall expire after 225 days of its having taken effect.

Section 2(c) of D.C. Law 17-100, in subsec. (a), substituted "limited, temporary," for "limited"; in subsec. (d), added the sentence "The court shall waive the appointments of a visitor and examiner if the petition seeks appointment of an emergency guardian or a health-care guardian and the petition is supported by the certification of incapacity made pursuant to section 21-2204." at the end; in subsec. (f), substituted "The court may waive the appointment of a visitor and, where a current individual habilitation plan prepared pursuant to section 7-1304.03 is submitted to the court, the court may waive the appointment of an examiner." for the second and third sentences; and in subsec. (g), substituted "individual" for "other individual" and added the sentence "For an individual alleged to be incapacitated for health-care decisions, the certification of incapacity made pursuant to section 21-2204 shall be presented as evidence to the court." at the end.

Section 6(b) of D.C. Law 17-100 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(c) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 2(c) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 2(c) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 2(c) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) amendment, see § 2(c) of Health-Care Decisions for Persons

with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Legislative history of Law 8-34. — For legislative history of D.C. Law 8-34, see Historical and Statutory Notes following § 21-2002.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 21-501.

Legislative history of Law 17-249. — For Law 17-249, see notes following § 21-2002.

Editor's notes. — Uniform Law: This section is based upon § 2-203 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

ANALYSIS

Findings.
Grounds for appointment.
Procedure.
Review.

Findings.

Record supported trial court's finding, for purpose of deciding whether to allow adult to be represented by a particular attorney in general proceeding on whether adult was an incapacitated individual and whether a conservator of his estate should be appointed, that attorney had a conflict of interest; evidence showed that adult's mother consulted with attorney from time to time in an effort to secure additional funds or purchases from guardianship estate, that a lawyer with attorney's firm represented mother in a complaint seeking to remove guardian, and that mother, in complaint, averred that her family had requested that guardianship be managed by attorney's firm. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Record supported trial court's findings, for purpose of deciding whether to allow adult to be represented by a particular attorney in general proceeding on whether adult was an incapacitated individual and whether a conservator of his estate should be appointed, that adult had not selected attorney as his attorney, that attorney was actually his parents' attorney, that he signed no retainer agreement for attorney's services, that he did not know what a living trust was, as one document that attorney allegedly prepared for him, and that he did not have an ability to secure an attorney on his own; trial looked at, inter alia, adult's testimony and school records. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Grounds for appointment.

Evidence, including physician's expert opinion, that guardian was necessary to assist in medical decisionmaking for alleged incapacitated individual weighed heavily in favor of appointment of limited guardian, without regard to merits of other petitions Mental Retardation and Development Disabilities Administration (MRDDA) filed or planned to file; substituted consent legislation did not create either permanent or complete alternative to court-designation of individuals to make health-care decisions on behalf of MRDDA's customers, and alleged incapacitated individual was involved in pending federal court litigation in which consent decree required District of Columbia to seek appointment of a guardian strictly for individual. In re Estate of Gillis, 849 A.2d 1015, 2004 D.C. App. LEXIS 245 (2004).

Although court may waive appointment of an examiner and a visitor when making informed decisions about need for guardian and conservator and, if need exists, about whom to appoint, such appointments are to be made in every case unless sound reasons exist to forego them. In re Orshansky, 804 A.2d 1077, 2002 D.C. App. LEXIS 488 (2002).

Probate court lacked sound factual foundation for selecting guardian for patient, for ordering that patient be returned from New York to District of Columbia for care, and for concluding that conservator was required to protect patient's assets and provide money for her support; court did not appoint either an examiner or a visitor to evaluate patient's condition and needs, and parties made little if any effort to furnish the necessary information through expert testimony and witnesses with personal knowledge of material facts. In re Orshansky, 804 A.2d 1077, 2002 D.C. App. LEXIS 488 (2002).

That adult daughter's elderly father might be mentally ill did not warrant appointment of guardian or conservator under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act, absent showing that father was in danger of being unable to provide for himself or to protect his assets. In re Hodges, 756 A.2d 389, 2000 D.C. App. LEXIS 163 (2000).

Fact that adult daughter's elderly father sold his home in Colorado for an unreasonably low sum did not warrant appointment of guardian or conservator under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act, where father

wanted to get away from daughter, whom he suspected was trying to poison him, and gave son power of attorney with instructions to sell house. In re Hodges, 756 A.2d 389, 2000 D.C. App. LEXIS 163 (2000).

Procedure.

Trial court did not deprive adult of a meaningful opportunity to present his case in general proceeding on whether adult was an incapacitated individual and whether a conservator of his estate should be appointed, even though trial court declined to allow adult to be represented by a private attorney rather than attorney appointed by court; appointed counsel zealously opposed conservatorship petition, prevailed on issue of adult's right to remain silent, cross examined witnesses, and insisted on cross examining court-appointed examiner after he filed his report. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Probate court abused its discretion by appointing conservator and guardian for hospital patient; little if any effort was made to ascertain patient's wishes, no guardian ad litem was appointed to assist her, neither her own counsel nor appointed conservator undertook to convey patient's desires to the court, and entire proceeding was conducted in patient's absence. In re Orshansky, 804 A.2d 1077, 2002 D.C. App. LEXIS 488 (2002).

Review.

The decision to appoint a guardian or a conservator is committed to the trial court's considerable discretion, and an appellate court reviews it only for abuse of that discretion. In re Uwazih, 822 A.2d 1074, 2003 D.C. App. LEXIS 274 (2003).

§ 21-2042. Notice; guardianship proceeding.

(a) In a proceeding for the appointment of a guardian of an incapacitated individual, notice of a hearing shall be given to each of the following:

(1) The individual alleged to be incapacitated and his or her spouse or, if none, adult children, or, if none, parents;

(2) Any person who is serving as guardian or conservator, or who has the care and custody of the individual alleged to be incapacitated;

(3) In case no other individual is notified under paragraph (1) of this subsection, at least 1 of the nearest adult relatives, if any can be found; and

(4) Any other person as directed by the court.

(b) Notice of a hearing on a petition for an order subsequent to appointment of a guardian shall be given to the ward, the guardian, and any other person ordered by the court.

(c) Notice shall be served personally on the alleged incapacitated individual. Notice to other individuals as required by subsection (a) of this section shall be served personally if the individual to be notified can be found within the District. In all other cases, required notices shall be given as provided in section 21-2031.

(d) The individual alleged to be incapacitated may not waive notice.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Mar. 24, 1998, D.C. Law 12-81, § 14(s), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 21-2042.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-2011.

Editor's notes. — Uniform Law: This section is based upon § 2-204 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

§ 21-2043. Who may be guardian; priorities.

(a) Any qualified person may be appointed guardian of an incapacitated individual.

(a-1)(1) Except as provided in paragraph (2) of this subsection, a person will be deemed by the court to have a conflict of interest and may not be appointed as a guardian if the person:

(A) Provides substantial services other than serving as guardian to the incapacitated individual in a professional or business capacity;

(B) Is a creditor of the incapacitated individual; or

(C) Is employed by any person or entity that provides services other than serving as guardian to the incapacitated individual in a professional or business capacity.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, a person may be appointed as a guardian if:

(A) The person is the incapacitated individual's spouse, domestic partner, adult child, parent, adult sibling, or relative with whom the incapacitated individual has resided for more than 6 months prior to the filing of the petition; and

(B) The court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the best interests of the incapacitated individual; provided, that the court may not appoint a guardian in any other circumstance in which a conflict of interest may occur.

(b) Unless lack of qualification or other good cause dictates the contrary, the court shall appoint a guardian in accordance with the incapacitated individual's current stated wishes or his or her most recent nomination in a durable power of attorney.

(c) Except as provided in subsection (b) of this section, the following persons are entitled to consideration for appointment in the order listed:

(1) The spouse or domestic partner of the incapacitated individual or a person nominated by will of a deceased spouse or domestic partner or by another writing signed by the spouse or domestic partner and attested by at least 2 witnesses;

(2) An adult child of the incapacitated individual or a person nominated by will of a deceased adult child or by other writing signed by the child and attested by at least 2 witnesses;

(3) A parent of the incapacitated individual or a person nominated by will of a deceased parent or by other writing signed by a parent and attested by at least 2 witnesses;

(3A) An adult sibling of the incapacitated individual or a person nominated by will of a deceased sibling or by other writing signed by an adult sibling and attested by at least 2 witnesses;

(4) Any relative of the incapacitated individual with whom he or she has resided for more than 6 months prior to the filing of the petition; and

(5) Any other person.

(d) With respect to persons having equal priority, the court shall select the person it deems best qualified to serve. The court, acting in the best interest of

the incapacitated individual, may pass over a person having priority and appoint a person having a lower priority or no priority.

(e) A guardian shall limit his or her caseload to a size that allows the guardian:

(1) To accurately and adequately support and protect each ward;

(2) To maintain regular and reasonable contact with each ward, including a minimum of one visit per month, unless otherwise specified by the court based on the expressed preferences of the ward or the ward's best interests; and

(3) To have regular contact with service providers.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Apr. 4, 2006, D.C. Law 16-79, § 7(b), 53 DCR 1035; Oct. 22, 2008, D.C. Law 17-249, § 2(d), 55 DCR 9206.)

Prior Codifications. — 1981 Ed., § 21-2043.

Effect of amendments. — D.C. Law 16-79, in subsec. (c)(1), substituted "spouse or domestic partner" for "spouse".

D.C. Law 17-249 added subsecs. (a-1), (c)(3A), and (e).

Temporary Amendment of Section. — Section 2(d) of D.C. Law 16-194 added par. (3A) to subsec. (c) and added subsecs. (a-1) and (e) to read as follows:

"(a-1)(1) Except as provided in paragraph (2) of this subsection, a person may not be appointed as a guardian if the person:

"(A) Provides substantial services to the incapacitated individual in a professional or business capacity;

"(B) Is a creditor of the incapacitated individual; or

"(C) Is employed by any person or entity that provides services to the incapacitated individual in a professional or business capacity.

"(2) Notwithstanding the provisions of subsection (a-1) of this section, a person may be appointed as a guardian if the person is the incapacitated individual's spouse, domestic partner, adult child, parent, adult sibling, or relative with whom the incapacitated individual has resided for more than 6 months prior to the filing of the petition and the court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the best interests of the incapacitated individual. The court may not appoint a guardian in any other circumstance in which a conflict of interest may occur."

"(3A) An adult sibling of the incapacitated individual or a person nominated by will of a deceased sibling or by other writing signed by an adult sibling and attested by at least 2 witnesses;"

"(e) A guardian shall limit his or her caseload to a size that allows the guardian:

"(1) To accurately and adequately support and protect each ward;

"(2) To make a minimum of one visit per month with each ward; and

"(3) To have regular contact with service providers.".

Section 6(b) of D.C. Law 16-194 provided that the act shall expire after 225 days of its having taken effect.

Section 2(d) of D.C. Law 17-100 added subsecs. (a-1), (c)(3A), and (e) to read as follows:

"(a-1)(1) Except as provided in paragraph (2) of this subsection, a person may not be appointed as a guardian if the person:

"(A) Provides substantial services to the incapacitated individual in a professional or business capacity;

"(B) Is a creditor of the incapacitated individual; or

"(C) Is employed by any person or entity that provides services to the incapacitated individual in a professional or business capacity.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, a person may be appointed as a guardian if:

"(A) The person is the incapacitated individual's spouse, domestic partner, adult child, parent, adult sibling, or relative with whom the incapacitated individual has resided for more than 6 months prior to the filing of the petition; and

"(B) The court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the best interests of the incapacitated individual. The court may not appoint a guardian in any other circumstance in which a conflict of interest may occur."

"(3A) An adult sibling of the incapacitated individual or a person nominated by will of a deceased sibling or by other writing signed by an adult sibling and attested by at least 2 witnesses;"

"(e) A guardian shall limit his or her caseload to a size that allows the guardian:

"(1) To accurately and adequately support and protect each ward;

"(2) To make a minimum of one visit per month with each ward; and

"(3) To have regular contact with service providers."

Section 6(b) of D.C. Law 17-100 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 2(d) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 2(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 2(d) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) amendment, see § 2(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 21-2011.

Legislative history of Law 17-249. — For Law 17-249, see notes following § 21-2002.

Editor's notes. — Uniform Law: This section is based upon § 2-205 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

Ward's wishes.

Probate court abused its discretion by appointing conservator and guardian for hospital patient; little if any effort was made to ascertain patient's wishes, no guardian ad litem was appointed to assist her, neither her own counsel nor appointed conservator undertook to convey patient's desires to the court, and entire proceeding was conducted in patient's absence. In re Orshansky, 804 A.2d 1077, 2002 D.C. App. LEXIS 488 (2002).

§ 21-2044. Findings; order of appointment.

(a) The court shall exercise the authority conferred in this subchapter so as to encourage the development of maximum self-reliance and independence of the incapacitated individual. The court, on appropriate findings, may appoint a limited guardian, a temporary guardian, or a general guardian. When the court appoints a guardian, it shall appoint the type of guardianship that is least restrictive to the incapacitated individual in duration and scope, taking into account the incapacitated individual's current mental and adaptive limitations or other conditions warranting the appointment.

(b) The court may appoint a guardian as requested if it is satisfied that the individual for whom a guardian is sought is incapacitated and that the appointment is necessary as a means of providing continuing care and supervision of the person of the incapacitated individual. The court, on appropriate findings, may:

(1) Treat the petition as a petition for a protective order under section 21-2051 and proceed accordingly;

(2) Enter any other appropriate order; or

(3) Dismiss the proceedings.

(c) The court, at the time of appointment, later on its own motion, or on

appropriate petition or motion of the incapacitated individual or other interested person, may limit the powers of a guardian otherwise conferred by this chapter and create a limited guardianship. Any limitation on the statutory power of a guardian of an incapacitated individual shall be endorsed on the guardian's letters. Following the same procedure, a limitation may be removed or modified and appropriate letters issued.

(d) While a petition for appointment of a guardian is pending, after a preliminary hearing, and without notice to others, the court may preserve and apply the property of the individual to be protected as may be required for support of the individual or dependents of the individual.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Oct. 22, 2008, D.C. Law 17-249, § 2(e), 55 DCR 9206.)

Prior Codifications. — 1981 Ed., § 21-2044.

Effect of amendments. — D.C. Law 17-249 rewrote subsec. (a), which had read as follows: "(a) The court shall exercise the authority conferred in this subchapter so as to encourage the development of maximum self-reliance and independence of the incapacitated individual and make appointive and other orders only to the extent necessitated by the incapacitated individual's mental and adaptive limitations or other conditions warranting the procedure."

Temporary Amendment of Section. — Section 2(e) of D.C. Law 16-194 amended (a) to read as follows:

"(a) The court shall exercise the authority conferred in this subchapter so as to encourage the development of maximum self-reliance and independence of the incapacitated individual. The court, on appropriate findings, may appoint a limited guardian, a temporary guardian, or a general guardian. When the court appoints a guardian, it shall appoint the type of guardianship which is least restrictive to the incapacitated individual in duration and scope, taking into account the incapacitated individual's current mental and adaptive limitations or other conditions warranting the procedure."

Section 6(b) of D.C. Law 16-194 provided that the act shall expire after 225 days of its having taken effect.

Section 2(e) of D.C. Law 17-100 amended subsec. (a) to read as follows:

"(a) The court shall exercise the authority conferred in this subchapter so as to encourage the development of maximum self-reliance and independence of the incapacitated individual. The court, on appropriate findings, may appoint a limited guardian, a temporary guardian, or a general guardian. When the court appoints a guardian, it shall appoint the type of guardianship that is least restrictive to the incapacitated individual in duration and scope, taking into account the incapacitated individual's current mental and adaptive limitations or other warranted conditions."

Section 6(b) of D.C. Law 17-100 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(e) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 2(e) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 2(e) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 2(e) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) amendment, see § 2(e) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Legislative history of Law 17-249. — For Law 17-249, see notes following § 21-2002.

Editor's notes. — Uniform Law: This section is based upon § 2-206 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

Legislative intent.

Provisions of Guardianship, Protective Proceedings, and Durable Power of Attorney Act manifest legislative intent to confer upon trial court considerable discretion in deciding whether guardian should be removed or a conservator replaced. D.C. Code 1981, §§ 21-2001 to 21-2085. In re Langon, 663 A.2d 1248, 1995 D.C. App. LEXIS 165 (1995).

§ 21-2045. Acceptance of appointment; consent of jurisdiction.

By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered or mailed to the guardian at the address listed in the court records and at the address as then known to the petitioner, except where the guardian resides in a foreign jurisdiction in which case notice shall be made to the court.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2045.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 2-207 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

§ 21-2046. Temporary guardians.

(a) Temporary guardians are guardians appointed for a finite period of time. Temporary guardians include emergency guardians, health-care guardians, and provisional guardians. All provisions of this chapter apply to temporary guardians unless otherwise specified.

(b)(1) The court, on appropriate petition, may appoint an emergency guardian, whose authority may not extend beyond 21 days, if:

(A) An incapacitated individual has no guardian;

(B) A life-threatening situation or situation involving emergency care exists; and

(C) There is no other person with authority to act who is reasonably available, mentally capable, and willing to act.

(2) An emergency guardian appointed pursuant to this subsection may exercise those powers granted in the order.

(3) Immediately upon receipt of the petition, the court shall appoint counsel for the individual alleged to be incapacitated and provide notice to the individual alleged to be incapacitated and to interested persons, pursuant to section 21-2042.

(4) The individual alleged to be incapacitated, counsel for that individual, or any other interested person may request a hearing at any time within the period of the emergency guardianship. The hearing shall be held no later than 48 hours after the request.

(5) The court may extend the authority of an emergency guardian

appointed pursuant to this subsection to authorize the emergency guardian to serve as a health-care guardian consistent with subsection (c) of this section.

(c)(1) The court, on appropriate petition, may appoint a health-care guardian for the individual alleged to be incapacitated for a specified period of time of up to 90 days if:

(A) An individual has been determined to be incapacitated under section 21-2204;

(B) The individual has no guardian; and

(C) There is no other person with authority to act who is reasonably available, mentally capable, and willing to act.

(2) The health-care guardian shall have the powers and duties set forth at section 21-2047.02(b).

(3) An appropriate petition shall include the certification of incapacity made pursuant to section 21-2204. Immediately upon receipt of the petition, counsel shall be appointed for the individual alleged to be incapacitated, and notice provided to the individual alleged to be incapacitated and to interested persons, pursuant to section 21-2042. The hearing shall be held within 7 days of receipt of the petition.

(4) The court may extend the authority of a health-care guardian for one additional period of up to 90 days:

(A) Upon determination of continued incapacity and determination of a continued need for the provision of substituted consent for any health-care service, treatment, or procedure pursuant to section 21-2210; or

(B) If a petition for a permanent limited guardian or general guardian, pursuant to section 21-2041, has been filed with the court prior to the expiration of the appointment of the temporary guardian.

(d) If the court finds that any appointed guardian is not effectively performing duties and that the welfare of the ward requires immediate action, it may appoint a provisional guardian, with notice to interested parties within 14 days after the appointment. The provisional guardian shall have the powers set forth in the previous order of appointment for a specified period not to exceed 6 months. The authority of any permanent guardian previously appointed by the court is suspended as long as a provisional guardian has authority.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Oct. 22, 2008, D.C. Law 17-249, § 2(f), 55 DCR 9206.)

Prior Codifications. — 1981 Ed., § 21-2046.

Effect of amendments. — D.C. Law 17-249 rewrote the section.

Temporary Amendment of Section. — Section 2(b) of D.C. Law 12-249 amended the first sentence of (a) to read as follows:

"If an incapacitated individual has no guardian, a life threatening situation or a situation involving emergency care exists, and no other person appears to have authority to act within the circumstances, the court, on appropriate petition, may appoint a temporary guardian whose authority may not extend beyond 15 days and who may exercise those powers granted in the order."

Section 5(b) of D.C. Law 12-249 provided that this act shall expire after 225 days of its having taken effect.

Section 2 (b) of D.C. Law 13-88 in subsec. (a) substituted for "life threatening emergency" the phrase "life threatening situation or a situation involving emergency care".

Section 5(b) of D.C. Law 13-88 provided that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 14-64, in subsec. (a), substituted "life-threatening situation or a situation involving emergency care" for "life threatening emergency".

Section 5(b) of D.C. Law 14-64 provided that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 14-241 amended the section by substituting "life-threatening situation or a situation involving emergency care" for "life threatening emergency".

Section 5(b) of D.C. Law 14-241 provided that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 15-98, in subsec. (a), substituted "life-threatening situation or a situation involving emergency care" for "life threatening emergency".

Section 5(b) of D.C. Law 15-98 provided that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 15-245, in subsec. (a), substituted "life-threatening situation or a situation involving emergency care" for "life threatening emergency".

Section 5(b) of D.C. Law 15-245 provided that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 16-46, in subsec. (a), substituted "life-threatening situation or a situation involving emergency care" for "life threatening emergency".

Section 6(b) of D.C. Law 16-46 provided that the act shall expire after 225 days of its having taken effect.

Section 2(f) of D.C. Law 16-194 amended this section to read as follows:

"§ 21-2046. Temporary guardians.

"(a) Temporary guardians are guardians appointed for a finite period of time. Temporary guardians include emergency guardians, health-care guardians, and provisional guardians. All provisions of this chapter apply to temporary guardians unless otherwise specified.

"(b)(1) The court, on appropriate petition, may appoint an emergency guardian, whose authority may not extend beyond 15 days, if:

"(A) An incapacitated individual has no guardian;

"(B) A life-threatening situation or situation involving emergency care exists; and

"(C) No other person appears to have authority to act within the circumstances.

"(2) An emergency guardian appointed pursuant to this subsection may exercise those powers granted in the order

"(3) Immediately upon receipt of the petition, the court shall appoint counsel for the individual alleged to be incapacitated and provide notice to the individual alleged to be incapacitated and to interested persons, pursuant to section 21-2042.

"(4) The individual alleged to be incapacitated, counsel for that individual, or any other interested person may request a hearing at any time within the period of the temporary guardianship. The hearing shall be held no later than 48 hours after the request.

"(5) The court may extend the authority of an emergency guardian appointed pursuant to this subsection to authorize the emergency guardian to serve as a health-care guardian consistent with subsection (c) of this section.

"(c)(1) The court, on appropriate petition, may appoint a health-care guardian for the individual alleged to be incapacitated for a specified period of time of up to 90 days if:

"(A) An individual has been determined to be incapacitated under section 21-2204;

"(B) The individual has no guardian; and

"(C) No other person appears to have authority to act within the circumstances.

"(2) The health-care guardian shall have the powers and duties set forth at section 21-2047b(b).

"(3) An appropriate petition shall include the certification of incapacity made pursuant to section 21-2204. Immediately upon receipt of the petition, counsel shall be appointed for the individual alleged to be incapacitated, and notice provided to the individual alleged to be incapacitated and to interested persons, pursuant to section 21-2042. The hearing shall be held within 7 days of receipt of the petition.

"(4) The court may extend the authority of a health-care guardian for one additional period of up to 90 days:

"(A) Upon determination of continued incapacity and determination of a continued need for the provision of substituted consent for any health-care service, treatment, or procedure pursuant to section 21-2210; or

"(B) If a petition for a permanent limited guardian or general guardian, pursuant to section 21-2041, has been filed with the court prior to the expiration of the appointment of the temporary guardian.

"(d) If the court finds that any appointed guardian is not effectively performing duties and that the welfare of the ward requires immediate action, it may appoint, with notice to interested parties within 14 day after the appointment, a provisional guardian. The provisional guardian shall have the powers set forth in the previous order of appointment for a specified period not to exceed 6 months. The authority of any permanent guardian previously appointed by the court is suspended as long as a provisional guardian has authority."

Section 6(b) of D.C. Law 16-194 provided that the act shall expire after 225 days of its having taken effect.

Section 2(f) of D.C. Law 17-100 amended this section to read as follows:

"§ 21-2046. Temporary guardians.

"(a) Temporary guardians are guardians appointed for a finite period of time. Temporary guardians include emergency guardians, health-care guardians, and provisional guardians. All provisions of this chapter apply to temporary guardians unless otherwise specified.

"(b)(1) The court, on appropriate petition, may appoint an emergency guardian, whose authority may not extend beyond 15 days, if:

"(A) An incapacitated individual has no guardian;

"(B) A life-threatening situation or situation involving emergency care exists; and

"(C) No other person appears to have authority to act within the circumstances.

"(2) An emergency guardian appointed pursuant to this subsection may exercise those powers granted in the order.

"(3) Immediately upon receipt of the petition, the court shall appoint counsel for the individual alleged to be incapacitated and provide notice to the individual alleged to be incapacitated and to interested persons, pursuant to section 21-2042.

"(4) The individual alleged to be incapacitated, counsel for that individual, or any other interested person may request a hearing at any time within the period of the temporary guardianship. The hearing shall be held no later than 48 hours after the request.

"(5) The court may extend the authority of an emergency guardian appointed pursuant to this subsection to authorize the emergency guardian to serve as a health-care guardian consistent with subsection (c) of this section.

"(c)(1) The court, on appropriate petition, may appoint a health-care guardian for the individual alleged to be incapacitated for a specified period of time of up to 90 days if:

"(A) An individual has been determined to be incapacitated under section 21-2204;

"(B) The individual has no guardian; and

"(C) No other person appears to have authority to act within the circumstances.

"(2) The health-care guardian shall have the powers and duties set forth at section 21-2047b(b).

"(3) An appropriate petition shall include the certification of incapacity made pursuant to section 21-2204. Immediately upon receipt of the petition, counsel shall be appointed for the individual alleged to be incapacitated, and notice provided to the individual alleged to be incapacitated and to interested persons, pursuant to section 21-2042. The hearing shall be held within 7 days of receipt of the petition.

"(4) The court may extend the authority of a health-care guardian for one additional period of up to 90 days:

"(A) Upon determination of continued incapacity and determination of a continued need for the provision of substituted consent for any health-care service, treatment, or procedure pursuant to section 21-2210; or

"(B) If a petition for a permanent limited guardian or general guardian, pursuant to section 21-2041, has been filed with the court prior to the expiration of the appointment of the temporary guardian.

"(d) If the court finds that any appointed guardian is not effectively performing duties and that the welfare of the ward requires immediate action, it may appoint, with notice to interested parties within 14 day after the appointment, a provisional guardian. The provisional guardian shall have the powers set forth in the previous order of appointment for a specified period not to exceed 6 months. The authority of any permanent guardian previously appointed by the court is suspended as long as a provisional guardian has authority."

Section 6(b) of D.C. Law 17-100 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2(b) of the Mentally Retarded Citizens Substituted Consent for Health Care Decisions Emergency Amendment Act of 1998 (D.C. Act 12-554, December 30, 1998, 45 DCR 566).

For temporary amendment of section, see § 2(b) of the Mentally Retarded Citizens Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-56, April 16, 1999, 46 DCR 4289).

For temporary (90-day) amendment of section, see § 2(b) of the Mentally Retarded Citizens Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-56, April 16, 1999, 46 DCR 3858).

For temporary (90-day) amendment of section, see § 2(b) of the Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 1999 (D.C. Act 13-202, December 1, 1999, 47 DCR 134).

For temporary (90-day) amendment of section, see § 2(b) of the Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-285, March 7, 2000, 47 DCR 2033).

For temporary (90-day) amendment of section, see § 2(b) of the Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-455, November 7, 2000, 47 DCR 9415).

For temporary (90 day) amendment of section, see § 2(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency

Amendment Act of 2001 (D.C. Act 14-3, February 13, 2001, 48 DCR 2251).

For temporary (90 day) amendment of section, see § 2(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-246, January 28, 2002, 49 DCR 1040).

For temporary (90 day) amendment of section, see § 2(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2002 (D.C. Act 14-514, October 23, 2002, 49 DCR 10480).

For temporary (90 day) amendment of section, see § 2(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Second Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-602, January 7, 2003, 50 DCR 684).

For temporary (90 day) amendment of section, see § 2(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2003 (D.C. Act 15-234, November 25, 2003, 50 DCR 10734).

For temporary (90 day) amendment of section, see § 2(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-359, February 19, 2004, 51 DCR 2578).

For temporary (90 day) amendment of section, see § 2(b) of Citizens with Mental Retardation Substituted for Health Care Decisions Emergency Amendment Act of 2004 (D.C. Act 15-558, October 26, 2004, 51 DCR 10375).

For temporary (90 day) amendment of section, see § 2(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-6, January 19, 2005, 52 DCR 2683).

For temporary (90 day) amendment of section, see § 2(b) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005 (D.C. Act 16-190, October 28, 2005, 52 DCR 10021).

For temporary (90 day) amendment of section, see § 2(b) of Health-Care Decisions for Persons with Mental Retardation and Development Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-262, January 26, 2006, 53 DCR 795).

For temporary (90 day) amendment of section, see § 2(f) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 2(f) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 2(f) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 2(f) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) amendment, see § 2(f) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 12-249. — For legislative history of D.C. Law 12-249, see Historical and Statutory Notes following § 21-2011.

Legislative history of Law 14-64. — For Law 14-64, see notes following § 21-2011.

Legislative history of Law 14-241. — For Law 14-241, see notes following § 21-2011.

Legislative history of Law 15-98. — For Law 15-98, see notes following § s 21-2011.

Legislative history of Law 15-245. — For Law 15-245, see notes following § 21-2011.

Legislative history of Law 17-249. — For Law 17-249, see notes following § 21-2002.

Editor's notes. — Uniform Law: This section is based upon § 2-208 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

§ 21-2047. Powers and duties of general guardian and limited guardian.

Except as limited pursuant to section 21-2044, a general guardian or a limited guardian of an incapacitated individual is responsible for care, custody, and control of the ward, but is not personally liable to third persons by reason of that responsibility for acts of the ward.

(a) In particular and without qualifying the foregoing, a general guardian or limited guardian shall:

(1) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of the ward's capacities, limitations, needs, opportunities, and physical and mental health;

(2) Take reasonable care of the ward's personal effects and commence protective proceedings, if necessary, to protect other property of the ward;

(3) Apply any available money of the ward to the ward's current needs for support, care, habilitation, and treatment;

(4) Conserve any excess money of the ward for the ward's future needs, but if a conservator has been appointed for the estate of the ward, the guardian, at least quarterly, shall pay to the conservator money of the ward to be conserved for the ward's future needs;

(5) Report in writing the condition of the ward and of the ward's estate that has been subject to the guardian's possession or control, as ordered by the court on petition of any person interested in the ward's welfare or on any order of the court, but at least semiannually;

(6) Make decisions on behalf of the ward by conforming as closely as possible to a standard of substituted judgment or, if the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, make the decision on the basis of the ward's best interests;

(7) Include the ward in the decision-making process to the maximum extent of the ward's ability; and

(8) Encourage the ward to act on his or her own behalf whenever he or she is able to do so, and to develop or regain capacity to make decisions in those areas in which he or she is in need of decision-making assistance, to the maximum extent possible.

(b) A general guardian or limited guardian may:

(1) Receive money payable for the support of the ward under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship;

(2) Take custody of the person of the ward and establish the ward's place of abode within or without the District, if consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward;

(3) Institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward, if no conservator for the estate of the ward has been appointed;

(4) Consent to medical examination and medical or other professional care, treatment, or advice for the ward, without liability, by reason of the consent for injury to the ward resulting from the negligence or acts of third persons, unless the guardian fails to act in good faith;

(5) Obtain medical records for the purpose of applying for government entitlements or private benefits and have the status of a legal representative under the District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law 2-136; § 7-1201.01 et seq.); and

(6) If reasonable under all of the circumstances, delegate to the ward certain responsibilities for decisions affecting the ward's well-being.

(c) Repealed.

(d) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, and clothing personally provided to the ward, but only as approved by order of the court pursuant to section 21-2060(a).

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; May 10, 1989, D.C. Law 7-231, § 27, 36 DCR 492; Sept. 22, 1989, D.C. Law 8-34, § 2(h), 36 DCR 5035; Oct. 22, 2008, D.C. Law 17-249, § 2(g), 55 DCR 9206.)

Prior Codifications. — 1981 Ed., § 21-2047.

Effect of amendments. — D.C. Law 17-249, rewrote the section name line, which had read as follows: "General powers and duties of guardian."; in the lead-in language of the section and subsecs. (a) and (b), substituted "a general guardian or a limited guardian" for "guardian"; in subsec. (a)(4), deleted "and" from the end; in subsec. (a)(5), substituted "on any order of the court, but at least semiannually;" for "as required by court rule, but at least semi-annually."; added subsecs. (a)(6), (7), (8); and repealed subsec. (c).

Temporary Amendment of Section. — Section 2(g) of D.C. Law 16-194 amended the section heading to read as follows:

"§ 21-2047. Powers and duties of general guardian and limited guardian."; in the lead-in text substituted "a general guardian or a limited guardian" for "guardian"; in subsec. (a), in the lead-in text, substituted "general guardian or limited guardian" for "guardian", in par. (4) struck the word "and" at the end, in par. (5) substituted "on any order of the court, but at least semi-annually;" for "as required by court rule, but at least semi-annually.", and added pars. (6) and (7) to read as follows:

"(6) Make decisions on behalf of the ward by conforming as closely as possible to a standard of substituted judgment or, if the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, make the decision on the basis of the ward's best interests; and

"(7) Encourage the ward to participate with the guardian in the decision-making process to the maximum extent of the ward's ability in order to encourage the ward to act on his or her own behalf whenever he or she is able to do so, and to develop or regain capacity to make decisions in those areas in which he or she is in need of decision-making assistance, to the maximum extent possible."; in subsec. (b), in the introductory paragraph, substituted "general guardian or limited guardian" for "guardian"; and repealed subsec. (c).

Section 6(b) of D.C. Law 16-194 provided that the act shall expire after 225 days of its having taken effect.

Section 2(g) of D.C. Law 17-100 amended the section heading to read as follows: "§ 21-2047. Powers and duties of general guardian and limited guardian."; in the lead-in text, substituted "a general guardian or a limited guardian" for "guardian"; in subsec. (a), in the lead-in text, substituted "general guardian or limited guardian" for "guardian", in par. (4), deleted "and" at the end, in par. (5), substituted "on any order of the court, but at least semiannually;" for "as required by court rule, but at least semi-annually.", and added pars. (6), (7), and (8) to read as follows:

"(6) Make decisions on behalf of the ward by conforming as closely as possible to a standard of substituted judgment or, if the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, make the decision on the basis of the ward's best interests;

"(7) Include the ward in the decision-making process to the maximum extent of the ward's ability; and

"(8) Encourage the individual to act on his or her own behalf whenever he or she is able to do so, and to develop or regain capacity to make decisions in those areas in which he or she is in need of decision-making assistance, to the maximum extent possible."; in subsec. (b), in the lead-in text, substituted "general guardian or limited guardian" for "guardian"; and repealed subsec. (c).

Section 6(b) of D.C. Law 17-100 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(g) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) addition of sections, see § 2(h) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 2(g) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) addition of sections, see § 2(h) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 2(g) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR).

For temporary (90 day) additions, see § 2(h) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 2(g) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) additions, see § 2(h) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) amendment, see § 2(g) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

For temporary (90 day) additions, see § 2(h) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Legislative history of Law 7-231. — Law 7-231, the "Technical Amendments Act of 1988," was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-34. — For legislative history of D.C. Law 8-34, see Historical and Statutory Notes following § 21-2002.

Legislative history of Law 17-249. — For Law 17-249, see notes following § 21-2002.

Editor's notes. — Uniform Law: This section is based upon § 2-209 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

Discretion of court.

Trial court abused its discretion, in denying, in part, the request for counsel fees submitted by counsel retained by guardian/conservator, i.e., trial court denied counsel fees for preparing the inventory, annual accounting, and conservatorship and guardianship reports, where trial court, while agreeing that counsel should receive reasonable compensation for his legal services, did not provide any explanation why it considered some services to be legal and others to be fiduciary, and provided no explanation why counsel would not receive compensation for non-legal services provided to guardian/conservator as the fiduciary. Snead v. Watkins (In re Estate of McDaniel), 953 A.2d 1021, 2008 D.C. App. LEXIS 286 (2008).

§ 21-2047.01. Limitations on temporary, limited, and general guardians.

A guardian shall not have the power:

(1) To consent to an abortion, sterilization, psycho-surgery, or removal of a bodily organ except to preserve the life or prevent the immediate serious impairment of the physical health of the incapacitated individual, unless the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

(2) To consent to convulsive therapy, experimental treatment or research, or behavior modification programs involving aversive stimuli, unless the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

(3) To consent to the withholding of non-emergency, life-saving, medical procedures unless it appears that the incapacitated person would have

consented to the withholding of these procedures and the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

(4) To consent to the involuntary or voluntary civil commitment of an incapacitated individual who is alleged to be mentally ill and dangerous under any provision or proceeding occurring under Chapter 5 of Title 21, except that a guardian may function as a petitioner for the commitment consistent with the requirements of Chapter 5 of Title 21 or Chapter 13 of Title 7;

(5) To consent to the waiver of any substantive or procedural right of the incapacitated individual in any proceeding arising from an insanity acquittal; or

(6) To prohibit the marriage or divorce, or consent to the termination of parental rights, unless the power is expressly set forth in the order of appointment or after subsequent hearing and order of the court.

(Oct. 22, 2008, D.C. Law 17-249, § 2(h), 55 DCR 9206.)

Temporary Addition of Section. — Section 2(h) of D.C. Law 16-194 added a section to read as follows:

"§ 21-2047a. Limitations on temporary, limited, and general guardians.

"A guardian shall not have the power:

"(1) To consent to an abortion, sterilization, psycho-surgery, or removal of a bodily organ except to preserve the life or prevent the immediate serious impairment of the physical health of the incapacitated individual, unless the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

"(2) To consent to convulsive therapy, experimental treatment or research, or behavior modification programs involving aversive stimuli, unless the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

"(3) To consent to the withholding of nonemergency, life-saving, medical procedures unless it appears that the incapacitated person would have consented to the withholding of these procedures and the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

"(4) To consent to the involuntary or voluntary civil commitment of an incapacitated individual who is alleged to be mentally ill and dangerous under any provision or proceeding occurring under Chapter 5 of Title 21, except that a guardian may function as a petitioner for the commitment consistent with the requirements of Chapter 5 of Title 21 or Chapter 13 of Title 7;

"(5) To consent to the waiver of any substantive or procedural right of the incapacitated individual in any proceeding arising from an insanity acquittal; or

"(6) To prohibit the marriage or divorce, or consent to the termination of parental rights, unless the power is expressly set forth in the order of appointment or after subsequent hearing and order of the court.

Section 6(b) of D.C. Law 16-194 provided that the act shall expire after 225 days of its having taken effect.

Section 2(h) of D.C. Law 17-100 added a section to read as follows:

"§ 21-2047a. Limitations on temporary, limited, and general guardians.

"A guardian shall not have the power:

"(1) To consent to an abortion, sterilization, psycho-surgery, or removal of a bodily organ, except to preserve the life or prevent the immediate serious impairment of the physical health of the incapacitated individual, unless the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

"(2) To consent to convulsive therapy, experimental treatment or research, or behavior modification programs involving aversive stimuli, unless the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

"(3) To consent to the withholding of nonemergency, life-saving, medical procedures unless it appears that the incapacitated person would have consented to the withholding of these procedures and the power to consent is expressly set forth in the order of appointment or after subsequent hearing and order of the court;

"(4) To consent to the involuntary or voluntary civil commitment of an incapacitated individual who is alleged to be mentally ill and dangerous under any provision or proceeding occurring under Chapter 5 of Title 21, except that a guardian may function as a petitioner for

the commitment consistent with the requirements of Chapter 5 of Title 21 or Chapter 13 of Title 7;

"(5) To consent to the waiver of any substantive or procedural right of the incapacitated individual in any proceeding arising from an insanity acquittal; or

"(6) To prohibit the marriage or divorce, or consent to the termination of parental rights, unless the power is expressly set forth in the order of appointment or after subsequent hearing and order of the court.

"(3) Have the status of a legal representative under Chapter 12 of Title 7."

Section 6(b) of D.C. Law 17-100 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 2(h) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) addition, see § 2(h) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) addition, see § 2(h) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) addition, see § 2(h) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) addition, see § 2(h) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 17-249. — For Law 17-249, see notes following § 21-2002.

§ 21-2047.02. Powers and duties of emergency and health-care guardians.

(a) Except as limited by sections 21-2046 and 21-2047.01, an emergency guardian or health-care guardian is responsible for providing substituted consent for an incapacitated individual and for any other duties authorized by the court, but is not personally liable to third persons by reason of that responsibility or acts of the incapacitated individual.

(b) An emergency or health-care guardian shall:

(1) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of his or her capacities, limitations, needs, opportunities, and physical and mental health;

(2) Make decisions on behalf of the ward by conforming as closely as possible to a standard of substituted judgment or, if the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, make the decision on the basis of the ward's best interests;

(3) Include the ward in the decision-making process to the maximum extent of the ward's ability.

(4) Encourage the individual to act on his or her own behalf whenever he or she is able to do so, and to develop or regain capacity to make decisions in those areas in which he or she is in need of decision-making assistance, to the maximum extent possible; and

(5) Make any report the court requires.

(c) An emergency or health-care guardian may:

(1) Grant, refuse, or withdraw consent to medical examination and health-care treatment for an individual who has been deemed incapacitated pursuant to section 21-2204;

(2) Obtain medical records for the purpose of providing substituted consent pursuant to section 21-2210; and

(3) Have the status of a legal representative under Chapter 12 of Title 7.

(Oct. 22, 2008, D.C. Law 17-249, § 2(h), 55 DCR 9206.)

Temporary Addition of Section. — Section 2(h) of D.C. Law 16-194 added a section to read as follows:

"§ 21-2047b. Powers and duties of emergency and health-care guardians.

"(a) Except as limited by sections 21-2046 and 21-2047a, an emergency guardian or health-care guardian is responsible for providing substituted consent for an incapacitated individual and for any other duties authorized by the court, but is not personally liable to third persons by reason of that responsibility or acts of the incapacitated individual.

"(b) An emergency or health-care guardian shall:

"(1) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of his or her capacities, limitations, needs, opportunities, and physical and mental health;

"(2) Make decisions on behalf of the ward by conforming as closely as possible to a standard of substituted judgment or, if the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, make the decision on the basis of the ward's best interests;

"(3) Encourage the ward to participate with the guardian in the decision-making process to the maximum extent of the ward's ability in order to encourage the individual to act on his or her own behalf whenever he or she is able to do so, and to develop or regain capacity to make decisions in those areas in which he or she is in need of decision-making assistance, to the maximum extent possible; and

"(4) Make any report the court requires.

"(c) An emergency or health-care guardian may:

"(1) Grant, refuse, or withdraw consent to medical examination and health-care treatment for which the individual has been deemed incapacitated pursuant to section 21-2204;

"(2) Obtain medical records for the purpose of providing substituted consent pursuant to section 21-2210; and

"(3) Have the status of a legal representative under Chapter 12 of Title 7."

Section 6(b) of D.C. Law 16-194 provided that the act shall expire after 225 days of its having taken effect.

Section 2(h) of D.C. Law 17-100 added a section to read as follows:

"§ 21-2047b. Powers and duties of emergency and health-care guardians.

"(a) Except as limited by sections 21-2046 and 21-2047a, an emergency guardian or health-care guardian is responsible for providing substituted consent for an incapacitated individual and for any other duties authorized by the court, but is not personally liable to third persons by reason of that responsibility or acts of the incapacitated individual.

"(b) An emergency or health-care guardian shall:

"(1) Become or remain personally acquainted with the ward and maintain sufficient contact with the ward to know of his or her capacities, limitations, needs, opportunities, and physical and mental health;

"(2) Make decisions on behalf of the ward by conforming as closely as possible to a standard of substituted judgment or, if the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, make the decision on the basis of the ward's best interests;

"(3) Include the ward in the decision-making process to the maximum extent of the ward's ability;

"(4) Encourage the individual to act on his or her own behalf whenever he or she is able to do so, and to develop or regain capacity to make decisions in those areas in which he or she is in need of decision-making assistance, to the maximum extent possible; and

"(5) Make any report the court requires.

"(c) An emergency or health-care guardian may:

"(1) Grant, refuse, or withdraw consent to medical examination and health-care treatment for an individual who has been deemed incapacitated pursuant to section 21-2204;

"(2) Obtain medical records for the purpose of providing substituted consent pursuant to section 21-2210; and

"(3) Have the status of a legal representative under Chapter 12 of Title 7."

Section 6(b) of D.C. Law 17-100 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 2(h) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) addition, see § 2(h) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) addition, see § 2(h) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) addition, see § 2(h) of Health-Care Decisions for Persons with Devel-

opmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) addition, see § 2(h) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 17-249. — For Law 17-249, see notes following § 21-2002.

§ 21-2048. Termination of guardianship for incapacitated individual.

The authority and responsibility of a guardian of an incapacitated individual terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or the removal or resignation of the guardian as provided in section 21-2049. The termination does not affect a guardian's liability for prior acts or the obligation to account for funds and assets of the ward.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2048.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 2-210 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

§ 21-2049. Removal or resignation of guardian; termination of incapacity.

(a)(1) On petition of the guardian, the court, after a hearing, may accept a resignation of a guardian.

(2) The court may remove a temporary guardian at any time.

(3) On petition of the ward or any interested person, or on the court's own motion, the court, after a hearing, may remove a limited guardian or a general guardian for any of the following reasons:

(A) Failure to discharge his or her duties, including failure to conform as closely as possible to a standard of substituted judgment or, if the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, to make a decision on the basis of the ward's best interests, pursuant to section 21-2047(a)(6) or 21-2047.02(b)(2);

(B) Abuse of his or her powers;

(C) Failure to comply with any order of the court;

(D) Failure to educate or provide for the ward as liberally as the ward's financial situation permits, if education and financial management fall within the scope of the guardianship;

(E) Interference with the ward's progress or participation in programs in the community; or

(F) For any other good cause.

(b) The ward or any person interested in the welfare of the ward may petition for an order that the ward is no longer incapacitated and for termination of the guardianship. A request for an order may also be made informally to the court and any individual who knowingly interferes with

transmission of the request may be adjudged guilty of contempt of court. A ward seeking termination is entitled to the same rights and procedures as in an original proceeding for appointment of a guardian.

(c) Upon removal, resignation, or death of the guardian, or if the guardian is determined to be incapacitated, the court may appoint a successor guardian and make any other appropriate order. Before appointing a successor guardian, or ordering that a ward's incapacity has terminated, the court shall follow the same procedures to safeguard the rights of the ward that apply to a petition for appointment of a guardian.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Oct. 22, 2008, D.C. Law 17-249, § 2(i), 55 DCR 9206.)

Prior Codifications. — 1981 Ed., § 21-2049.

Effect of amendments. — D.C. Law 17-249 rewrote subsec. (a), which had read as follows: "(a) On petition of the ward or any person interested in the ward's welfare, the court, after hearing, may remove a guardian if removal is in the best interest of the ward. On petition of the guardian, the court, after hearing, may accept a resignation."

Temporary Amendment of Section. — Section 2(i) of D.C. Law 16-194 amended subsec. (a) to read as follows:

"(a)(1) On petition of the guardian, the court, after hearing, may accept a resignation of a guardian.

"(2) The court may remove a temporary guardian at any time.

"(3) On petition of the ward or any interested person, or on the court's own motion, the court, after hearing, may remove a limited guardian or a general guardian for any of the following reasons:

"(A) Failure to discharge his or her duties, including failure to conform as closely as possible to a standard of substituted judgment or, if the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, to make a decision on the basis of the ward's best interests, pursuant to section 21-2047(a)(6) or 21-2047b(b)(2);

"(B) Abuse of his or her powers;

"(C) Failure to comply with any order of the court;

"(D) Failure to educate or provide for the ward as liberally as the ward's financial situation permits, if education and financial management fall within the scope of the guardianship;

"(E) Interference with the ward's progress or participation in programs in the community; or

"(F) For any other good cause."

Section 6(b) of D.C. Law 16-194 provided that the act shall expire after 225 days of its having taken effect.

Section 2(i) of D.C. Law 17-100 amended subsec. (a) to read as follows:

"(a)(1) On petition of the guardian, the court, after a hearing, may accept a resignation of a guardian.

"(2) The court may remove a temporary guardian at any time.

"(3) On petition of the ward or any interested person, or on the court's own motion, the court, after a hearing, may remove a limited guardian or a general guardian for any of the following reasons:

"(A) Failure to discharge his or her duties, including failure to conform as closely as possible to a standard of substituted judgment or, if the ward's wishes are unknown and remain unknown after reasonable efforts to discern them, to make a decision on the basis of the ward's best interests, pursuant to section 21-2047(a)(6) or 21-2047b(b)(2);

"(B) Abuse of his or her powers;

"(C) Failure to comply with any order of the court;

"(D) Failure to educate or provide for the ward as liberally as the ward's financial situation permits, if education and financial management fall within the scope of the guardianship;

"(E) Interference with the ward's progress or participation in programs in the community; or

"(F) For any other good cause."

Section 6(b) of D.C. Law 17-100 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(i) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 2(i) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 2(i) of Health-Care Decisions for

Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 2(i) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) amendment, see § 2(i) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Legislative history of Law 17-249. — For Law 17-249, see notes following § 21-2002.

Editor's notes. — Uniform Law: This section is based upon § 2-211 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

In general.

Provisions of Guardianship, Protective Proceedings, and Durable Power of Attorney Act manifest legislative intent to confer upon trial court considerable discretion in deciding whether guardian should be removed or a conservator replaced. D.C. Code 1981, §§ 21-2001 to 21-2085. In re Langon, 663 A.2d 1248, 1995 D.C. App. LEXIS 165 (1995).

Denial of petition to remove guardians and conservator was not an abuse of discretion where detailed interviews of ward showed ward wanted to remain in guardian's home and person seeking to change guardians produced merely hearsay and speculation. In re Langon, 663 A.2d 1248, 1995 D.C. App. LEXIS 165 (1995).

Subchapter VI. Protection of Property of Incapacitated, Disappeared or Detained Individuals.

§ 21-2051. Protective proceedings.

(a) Upon petition and after notice and hearing in accordance with the provisions of this subchapter, the court may appoint a conservator or make any other protective order for cause as provided in this section.

(b) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of an individual, if the court determines that either the individual is an incapacitated individual according to section 21-2011(11), has disappeared, is being detained by a foreign power, or is being held hostage by someone other than a foreign power and:

(1) The individual has property that will be wasted or dissipated unless property management is provided; or

(2) Money is needed for the support, care, and welfare of the individual or those entitled to the individual's support and protection is necessary or desirable to obtain and provide money.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Mar. 24, 1998, D.C. Law 12-81, § 14(t), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 21-2051.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-2011.

Editor's notes. — Uniform Law: This section is based upon § 2-301 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

ANALYSIS

Findings.
Grounds for appointment.
Procedure.
Right to counsel.
Sufficiency of evidence.

Findings.

Record supported trial court's finding, for purpose of deciding whether to allow adult to be represented by a particular attorney in general proceeding on whether adult was an incapacitated individual and whether a conservator of his estate should be appointed, that attorney had a conflict of interest; evidence showed that adult's mother consulted with attorney from time to time in an effort to secure additional funds or purchases from guardianship estate, that a lawyer with attorney's firm represented mother in a complaint seeking to remove guardian, and that mother, in complaint, averred that her family had requested that guardianship be managed by attorney's firm. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Record supported trial court's findings, for purpose of deciding whether to allow adult to be represented by a particular attorney in general proceeding on whether adult was an incapacitated individual and whether a conservator of his estate should be appointed, that adult had not selected attorney as his attorney, that attorney was actually his parents' attorney, that he signed no retainer agreement for attorney's services, that he did not know what a living trust was, as one document that attorney allegedly prepared for him, and that he did not have an ability to secure an attorney on his own; trial looked at, inter alia, adult's testimony and school records. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Grounds for appointment.

Attorney appointed as guardian ad litem for plaintiff in civil action alleging medical malpractice and assault and battery was not entitled to compensation under Guardianship Fund for ascertaining information concerning plaintiff's mental competency and for providing legal services to plaintiff in civil action; Guardianship Act did not authorize appointment of guardian ad litem for such purposes, superior court, which was not acting through its probate division, did not purport to appoint attorney pursuant to Act's procedures, and attorney was not providing services in a protective arrangement. Sullivan v. District of Columbia, 829 A.2d 221, 2003 D.C. App. LEXIS 477 (2003).

The test for imposing a court-appointed fiduciary under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act is proof that the subject cannot take those actions enumerated in the Act in order to provide for himself and protect himself. In re Hodges, 756 A.2d 389, 2000 D.C. App. LEXIS 163 (2000).

Procedure.

To achieve the paramount objective of the Guardianship Act, which is remedial legislation under which the trial court acts in a parens patriae role to protect the best interests of the incapacitated individual before it, the trial court ought not to be passive in the face of what it recognizes is a deficient presentation of evidence. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Adult did not show that trial court was biased in general proceeding on whether adult was an incapacitated individual and whether a conservator of his estate should be appointed, even though adult asserted that trial court questioned his witnesses to a greater extent than petitioner's witness and made certain evidentiary rulings, factual findings, and legal conclusions with which he disagreed; adult did not claim that trial court's actions derived from any source outside its participation in case. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Trial court did not deprive adult of a meaningful opportunity to present his case in general proceeding on whether adult was an incapacitated individual and whether a conservator of his estate should be appointed, even though trial court declined to allow adult to be represented by a private attorney rather than attorney appointed by court; appointed counsel zealously opposed conservatorship petition, prevailed on issue of adult's right to remain silent, cross examined witnesses, and insisted on cross examining court-appointed examiner after he filed his report. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Right to counsel.

Trial court did not deny adult's statutory right to counsel of his choice in general proceeding on whether he was an incapacitated individual and whether a conservator of his estate should be appointed because he had property that would be wasted or dissipated unless property management was provided, even though attorney, on day of scheduled initial hearing, filed an application for admission pro hac vice; attorney's application stated that it was for limited purpose of asking trial court to transfer adult's estate to Maryland, no attorney purporting to be retained by adult ever filed a notice of appearance required by rule, and such notice was not provided by certain other repre-

sentations. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Sufficiency of evidence.

Evidence other than adult's testimony was sufficient to establish a prima facie showing that adult was an incapacitated individual who required a conservator to protect his property, and thus adult was not prejudiced by error in trial court's decision that adult had to testify when called by petitioner in her case in chief, which violated adult's right to remain silent as stated on forms that adult received; petitioner testified that assets to which adult was entitled consisted of investments, bank accounts, savings bonds, and income in various amounts, and court-appointed examiner testified that adult functioned academically at a second-grade level and would not be able to manage his own substantial funds. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

§ 21-2052. Original petition for appointment or protective order.

(a) The individual to be protected or any person who is interested in the estate, affairs, or welfare of the individual may petition for the appointment of a conservator or for any other appropriate protective order.

(b) The petition must set forth, to the extent known:

(1) The name, address, and interest of the petitioner;

(2) The name, age, residence, and address of the individual to be protected;

(3) The name and address of the guardian, if any;

(4) The name and address of the nearest relative known to the petitioner;

(5) A general statement of the individual's property with an estimate of the value of that property, including any compensation, insurance, pension, or allowance to which the individual is entitled; and

(6) The reason why appointment of a conservator or other protective order is necessary, stated with sufficient particularity as to enable the court to determine what class of examiner and visitor should examine the individual alleged to be incapacitated. If the appointment of a conservator is requested, the petition shall also set forth the name and address of the person whose appointment is sought and the basis of any claim to priority for appointment.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2052.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 2-304 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

§ 21-2053. Notice.

(a) On a petition for appointment of a conservator or other protective order, the requirements for notice described in section 21-2042 apply, but if the individual to be protected has disappeared, has been detained by a foreign power, or is being held hostage by someone other than a foreign power, notice to the individual must be given by publication as provided in section 21-2031(b)(3).

(b) Notice of a hearing on a petition for an order subsequent to appointment of a conservator or other protective order shall be given to the protected

individual, any conservator of the protected individual's estate, and any other person as ordered by the court.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2053.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 2-305 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

§ 21-2054. Procedure concerning hearing and order on original petition.

(a) Upon receipt of a petition for appointment of a conservator or other protective order, the court shall set a date for a hearing. Unless the individual to be protected has chosen counsel, the court shall appoint an attorney to represent the individual. Except where the incapacity is alleged to be by disappearance or detention by a foreign power, the court may appoint an appropriately qualified examiner who shall submit a written report to the court. Except where the incapacity is alleged to be by disappearance or detention by a foreign power or someone other than a foreign power, the court may appoint a visitor who shall submit a written report to the court. If an examiner and a visitor are appointed for an individual, the examiner and visitor shall be separate persons.

(b) The court may utilize the services of additional visitors to evaluate the condition of the allegedly incapacitated individual and to make appropriate recommendations to the court.

(c) In the case of an individual whose incapacity is alleged to arise out of mental retardation, preference is for the appointment of an examiner and visitor who are qualified mental retardation professionals and who can collectively give a complete social, psychological, and medical evaluation of the individual. When the individual alleged to have mental retardation has a current comprehensive evaluation or habilitation plan, the plan shall be presented as evidence to the court. When a plan exists but has not been updated within 6 months prior to the hearing, preference is for an update of the plan as part of the examination conducted by the examiner and visitor.

(d) For other individuals alleged to be incapacitated, any current social, psychological, medical, or other evaluation used for diagnostic purposes or in the development of a current plan of treatment, or any current plan of treatment shall be presented as evidence to the court.

(e) An individual alleged to be incapacitated shall be present at the hearing unless good cause is shown for the absence. The individual shall be represented by counsel and is entitled to present evidence and cross-examine witnesses, including any court-appointed examiner or visitor. The hearing may be closed if the individual alleged to be incapacitated or counsel for the individual so requests.

(f) Any person may apply for permission to participate in the proceeding and the court may grant the request, with or without hearing, upon determining

that the best interest of the individual to be protected will be served. The court may attach appropriate conditions to the permission.

(g) After the hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Sept. 22, 1989, D.C. Law 8-34, § 2(i), 36 DCR 5035; Feb. 22, 1990, D.C. Law 8-63, § 2, 36 DCR 7718; May 15, 1990, D.C. Law 8-123, § 2, 37 DCR 2085; Apr. 24, 2007, D.C. Law 16-305, § 35(c)(3), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 21-2054.

Effect of amendments. — D.C. Law 16-305, in subsec. (c), substituted "individual alleged to have mental retardation" for "alleged mentally retarded individual".

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Legislative history of Law 8-34. — For legislative history of D.C. Law 8-34, see Historical and Statutory Notes following § 21-2002.

Legislative history of Law 8-63. — Law 8-63, the "Guardianship and Protective Proceedings Amendment Temporary Act of 1989," was introduced in Council and assigned Bill No. 8-397. The Bill was adopted on first and second readings on September 26, 1989, and October 10, 1989, respectively. Signed by the Mayor on October 27, 1989, it was assigned Act No. 8-98 and transmitted to both Houses of Congress for its review. D.C. Law 8-63 became effective on February 22, 1990.

Legislative history of Law 8-123. — Law 8-123, the "Guardianship and Protective Proceedings Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-387, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 13, 1990, and February 27, 1990, respectively. Signed by the Mayor on March 15, 1990, it was assigned Act No. 8-176 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 21-501.

Editor's notes. — Uniform Law: This section is based upon § 2-306 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

ANALYSIS

Attorney-in-fact.
Discretion of court.
Findings.
Grounds for appointment.
Procedure.
Review.

Attorney-in-fact.

Attorney-in-fact did not suffer plain legal prejudice from grant of petition for voluntary dismissal without prejudice of petition by attorney-in-fact's siblings for appointment of conservator of their incapacitated mother in lieu of, or in addition to, attorney-in-fact; litigation expenses incurred would benefit attorney-in-fact in any subsequent suit, attorney-in-fact's expenses could be mitigated by award of attorney fees and costs, siblings' assertion that attorney-in-fact had taken significant steps to improve mother's care was best possible reason for dismissal, and siblings did not file motion for dismissal at unreasonably late stage in litigation. In re Calomiris, 3 A.3d 308, 2010 D.C. App. LEXIS 501 (2010).

Discretion of court.

Decision of whether to appoint a conservator is committed to the considerable discretion of the trial court, and the Court of Appeals will reverse only for an abuse of discretion. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Trial court acted within its discretion in appointing petitioner's nominee for conservator, who was an attorney, as conservator of adult's estate, even though adult's counsel informed trial court that adult wanted another attorney to be designated as his conservator; adult had never met other attorney, other attorney did not present himself to trial court as a nominee, and trial court, in appointing petitioner's nominee, explained that it was familiar with his work and that he could serve as adult's role

model. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Findings.

Record supported trial court's finding, for purpose of deciding whether to allow adult to be represented by a particular attorney in general proceeding on whether adult was an incapacitated individual and whether a conservator of his estate should be appointed, that attorney had a conflict of interest; evidence showed that adult's mother consulted with attorney from time to time in an effort to secure additional funds or purchases from guardianship estate, that a lawyer with attorney's firm represented mother in a complaint seeking to remove guardian, and that mother, in complaint, averred that her family had requested that guardianship be managed by attorney's firm. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Record supported trial court's findings, for purpose of deciding whether to allow adult to be represented by a particular attorney in general proceeding on whether adult was an incapacitated individual and whether a conservator of his estate should be appointed, that adult had not selected attorney as his attorney, that attorney was actually his parents' attorney, that he signed no retainer agreement for attorney's services, that he did not know what a living trust was, as one document that attorney allegedly prepared for him, and that he did not have an ability to secure an attorney on his own; trial looked at, inter alia, adult's testimony and school records. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Grounds for appointment.

Probate court lacked sound factual foundation for selecting guardian for patient, for ordering that patient be returned from New York to District of Columbia for care, and for concluding that conservator was required to protect patient's assets and provide money for her support; court did not appoint either an examiner or a visitor to evaluate patient's condition and needs, and parties made little if any effort to furnish the necessary information through expert testimony and witnesses with personal knowledge of material facts. In re Orshansky, 804 A.2d 1077, 2002 D.C. App. LEXIS 488 (2002).

That adult daughter's elderly father might be mentally ill did not warrant appointment of guardian or conservator under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act, absent showing that father was in danger of being unable to provide for himself or to protect his assets. In re Hodges, 756 A.2d 389, 2000 D.C. App. LEXIS 163 (2000).

Fact that adult daughter's elderly father sold his home in Colorado for an unreasonably low sum did not warrant appointment of guardian or conservator under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act, where father wanted to get away from daughter, whom he suspected was trying to poison him, and gave son power of attorney with instructions to sell house. In re Hodges, 756 A.2d 389, 2000 D.C. App. LEXIS 163 (2000).

Procedure.

Trial court did not deprive adult of a meaningful opportunity to present his case in general proceeding on whether adult was an incapacitated individual and whether a conservator of his estate should be appointed, even though trial court declined to allow adult to be represented by a private attorney rather than attorney appointed by court; appointed counsel zealously opposed conservatorship petition, prevailed on issue of adult's right to remain silent, cross examined witnesses, and insisted on cross examining court-appointed examiner after he filed his report. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Review.

When reviewing a trial court's decision to appoint a conservator, the Court of Appeals considers whether the trial court had a factual basis for its determination and whether it made an informed decision in light of available alternatives. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Standard of review of a trial court's discretionary decision to appoint a conservator is deferential in recognition of the role that the trial court's on-the-spot judgment may play in choosing among alternatives. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

§ 21-2055. Permissible court orders.

(a) The court shall exercise the authority conferred in this subchapter to encourage the development of maximum self-reliance and independence of a protected individual and make protective orders only to the extent necessitated by the protected individual's mental and adaptive limitations and other conditions warranting the procedure.

(b) The court has the following powers that may be exercised directly or through a conservator with respect to the estate and business affairs of a protected individual:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court may preserve and apply the property of the individual to be protected as may be required for the support of the individual or dependents of the individual.

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to an individual, the court, for the benefit of the individual and members of the individual's immediate family, has all the powers over the estate and business affairs that the individual could exercise if present and not incapacitated, except the power to make a will. Those powers include, but are not limited to:

(A) Power to obtain medical records for purposes of application for governmental entitlements or private benefits;

(B) Power to make gifts;

(C) Power to convey or release contingent and expectant interests in property, including marital property rights and any right of survivorship incident to a joint tenancy or tenancy by the entirety;

(D) Power to exercise or release powers held by the protected individual as trustee, personal representative, custodian for a minor, conservator, or donee of a power of appointment;

(E) Power to enter into contracts;

(F) Power to create revocable or irrevocable trusts of property of the estate that may extend beyond the incapacity or life of the protected individual;

(G) Power to exercise options of the protected individual to purchase securities or other property;

(H) Power to exercise rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value; and

(I) Power to exercise any right to an elective share in the estate of the individual's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by inter vivos transfer.

(c) The court may exercise or direct the exercise of the following powers only if satisfied, after notice and hearing, that it is in the best interest of the protected individual and that the individual either is incapable of consenting or has consented to the proposed exercise of power:

(1) To exercise or release powers of appointment of which the protected individual is donee;

(2) To renounce or disclaim interests;

(3) To make gifts in trust or otherwise exceeding 20% of any year's income of the estate; and

(4) To change beneficiaries under insurance and annuity policies.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2055.

Uniform Law: This section is based upon § 2-307 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

ANALYSIS

Accounts and accounting.
Election for ward.
Powers of court.
Transfer of assets of adult ward to community spouse.

Accounts and accounting.

Under subdivision (b)(2) of this section, the right to waive the filing of an account by an incapacitated heir or legatee to an interest in an estate is within the power reserved to the court. Estate of Charuhas, 121 WLR 147 (Super. Ct. 1993).

Election for ward.

In determining whether to approve conservator's election for incompetent surviving spouse to take against the will, the best interests of the incompetent will, in most, instances be met by electing the option which provides the surviving spouse with the greatest monetary value. D.C. Code 1981, § 19-113. Spencer v. Williams, 569 A.2d 1194, 1990 D.C. App. LEXIS 21 (1990).

Only where there is clear indication of the incompetent spouse's actual wishes, not simply conjecture as to what one in his or her situation might generally do, should court take the wishes of the incompetent surviving spouse into consideration in determining whether conservator's decision to elect against the will is in the surviving spouse's best interest. D.C. Code 1981, § 19-113. Spencer v. Williams, 569 A.2d 1194, 1990 D.C. App. LEXIS 21 (1990).

Trial court properly ratified conservator's election for incompetent spouse to take against the will where that election resulted in her taking approximately $160,000 outright, whereas the will provided her with approximately $200,000 in trust, with the remainder to go to beneficiaries named by the husband in his will. D.C. Code 1981, § 19-113. Spencer v. Williams, 569 A.2d 1194, 1990 D.C. App. LEXIS 21 (1990).

Powers of court.

Statute governing permissible court orders in proceedings involving incapacitated persons did not give court the authority to supersede the function of the Medicaid spousal impoverishment provisions. In re Estate of Elwood Tyler, 130 WLR 1693 (Super. Ct. 2002).

Transfer of assets of adult ward to community spouse.

Court would not order transfer of all assets of adult ward to his community spouse pursuant to statute governing permissible court orders in proceedings involving incapacitated persons, so as to increase amount of Medicaid benefits ward would receive, where community spouse was able to meet her monthly obligations and was not rendered impoverished. In re Estate of Elwood Tyler, 130 WLR 1693 (Super. Ct. 2002).

Community spouse, who sought order permitting transfer of all assets of adult ward to herself, failed to demonstrate that valid inter vivos gifts had been made or that ward engaged in a pattern of giving over the years, so as to justify transfer pursuant to statute granting court the power, that could be exercised through a conservator, to make gifts. In re Estate of Elwood Tyler, 130 WLR 1693 (Super. Ct. 2002).

The issuance of an order authorizing the transfer of income and resources of adult ward to community spouse, absent showing a necessity, would work an obvious injustice and would allow spouse to receive excessive, rather than sufficient support, In re Estate of Elwood Tyler, 130 WLR 1693 (Super. Ct. 2002).

§ 21-2056. Protective arrangements and single transactions authorized.

(a) If it is established in a proper proceeding that a basis exists as described in section 21-2051 for affecting the property and business affairs of an individual, the court, without appointing a conservator, may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected individual. Protective arrangements include payment, delivery, deposit, or retention of funds or property; sale, mortgage, lease, or other transfer of property; entry into an annuity contract, a contract for life care, a deposit

contract, or a contract for training and education; or addition to or establishment of a suitable trust.

(b) If it is established in a proper proceeding that a basis exists as described in section 21-2051 for affecting the property and business affairs of an individual, the court, without appointing a conservator, may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected individual's property and business affairs if the court determines that the transaction is in the best interest of the protected individual.

(c) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected individual and, in view of the incapacity, disappearance, or detention by a foreign power, whether the protected individual needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2056.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 2-308 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

Compensation for services provided.

Attorney appointed as guardian ad litem for plaintiff in civil action alleging medical malpractice and assault and battery was not entitled to compensation under Guardianship Fund for ascertaining information concerning plaintiff's mental competency and for providing legal services to plaintiff in civil action; Guardianship Act did not authorize appointment of guardian ad litem for such purposes, superior court, which was not acting through its probate division, did not purport to appoint attorney pursuant to Act's procedures, and attorney was not providing services in a protective arrangement. Sullivan v. District of Columbia, 829 A.2d 221, 2003 D.C. App. LEXIS 477 (2003).

§ 21-2057. Who may be appointed conservator; priorities.

(a) The court may appoint a person or a corporation with general power to serve as trustee or conservator of the estate of a protected individual. The following are entitled to consideration for appointment in the order listed:

(1) A conservator, guardian of property, or other like fiduciary appointed or recognized by an appropriate court of any other jurisdiction in which the protected individual resides, or a person nominated by the incapacitated individual in a durable power of attorney;

(2) A person or corporation nominated by the protected individual;

(3) The spouse of the protected individual;

(4) An adult child of the protected individual;

(5) A parent of the protected individual;

(6) Any relative of the protected individual who has resided with the

protected individual for more than 6 months before the filing of the petition; and

(7) Any other person.

(b) An individual listed in paragraph (1), (3), (4), (5), or (6) of subsection (a) of this section may designate in writing a substitute to serve instead and transfer the priority to the substitute. With respect to persons having equal priority, the court shall select the person it deems best qualified to serve. The court, acting in the best interest of the protected individual, may pass over a person having priority and appoint a person having a lower priority or no priority.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Mar. 24, 1998, D.C. Law 12-81, § 14(u), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 21-2057.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-2011.

Editor's notes. — Uniform Law: This section is based upon § 2-309 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

ANALYSIS

Discretion of court.
In general.
Review.

Discretion of court.

Decision of whether to appoint a conservator is committed to the considerable discretion of the trial court, and the Court of Appeals will reverse only for an abuse of discretion. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Trial court acted within its discretion in appointing petitioner's nominee for conservator, who was an attorney, as conservator of adult's estate, even though adult's counsel informed trial court that adult wanted another attorney to be designated as his conservator; adult had never met other attorney, other attorney did not present himself to trial court as a nominee, and trial court, in appointing petitioner's nominee, explained that it was familiar with his work and that he could serve as adult's role model. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Trial court abused its discretion in overriding wife's expressed wish to be cared for by husband and husband's statutory priority under the Guardianship, Protective Proceedings, and Durable Power of Attorney Act to serve as wife's conservator; the trial court's decision to appoint another individual as wife's conservator was based on unproven accusations and suspicions rather than on actual findings of impropriety or conflict of interest on husband's part. In re Penning, 930 A.2d 144, 2007 D.C. App. LEXIS 403 (2007).

In general.

A conservator candidate's statutory priority under the Guardianship, Protective Proceedings, and Durable Power of Attorney Act does not necessarily entitle him to be appointed conservator as of right. In re Penning, 930 A.2d 144, 2007 D.C. App. LEXIS 403 (2007).

Probate court abused its discretion by appointing conservator and guardian for hospital patient; little if any effort was made to ascertain patient's wishes, no guardian ad litem was appointed to assist her, neither her own counsel nor appointed conservator undertook to convey patient's desires to the court, and entire proceeding was conducted in patient's absence. In re Orshansky, 804 A.2d 1077, 2002 D.C. App. LEXIS 488 (2002).

Review.

When reviewing a trial court's decision to appoint a conservator, the Court of Appeals considers whether the trial court had a factual basis for its determination and whether it made an informed decision in light of available alternatives. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Standard of review of a trial court's discretionary decision to appoint a conservator is deferential in recognition of the role that the trial court's on-the-spot judgment may play in choosing among alternatives. In re McMillan,

940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

§ 21-2058. Bond.

The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law, with sureties as it shall specify. Unless otherwise directed, the bond must be in the amount of the aggregate capital value of the property of the estate in the conservator's control, plus 1 year's estimated income, and minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land that the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2058.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 2-310 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

Liability of surety.

Indefinite statutory conservator's bonds were continuous, rather than cumulative from year to year, and, thus, surety's liability for conservator's defalcations over several years was capped at face amount of bonds, even though conservator paid annual premiums; the annual premiums were simply installment payments, reflecting the fact that the longer the bond remained in effect, the greater the risk assumed by the surety, and the more the bond should cost. Beck v. Continental Cas. Co. (In re May), 936 A.2d 747, 2007 D.C. App. LEXIS 568 (2007).

§ 21-2059. Effect of acceptance of appointment.

By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator or mailed, by registered or certified mail, to the address as listed in the petition for appointment or as reported to the court and to the address as then known to the petitioner, except where the conservator resides in a foreign jurisdiction in which case notice shall be made to the court.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2059.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 2-312 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

§ 21-2060. Compensation and expenses.

(a) As approved by order of the court, any visitor, attorney, examiner,

conservator, special conservator, guardian ad litem, or guardian is entitled to compensation for services rendered either in a guardianship proceeding, protective proceeding, or in connection with a guardianship or protective arrangement. Any guardian or conservator is entitled to reimbursement for room, board, and clothing personally provided to the ward from the estate of the ward, but only as approved by order of the court. Compensation shall be paid from the estate of the ward or person or, if the estate of the ward or person will be depleted by payouts made under this subsection, from a fund established by the District.

(a-1) The estate of a person or ward shall be presumed to be depleted for purposes of this chapter, and all compensation, expenses, and payouts made under this section shall be paid from a fund established by the District:

(1) If the person or ward qualifies for federal Supplemental Security Income under Title XVI of the Social Security Act [42 U.S.C. § 1381 et seq.];

(2) If the person or ward qualifies for Medicaid or Medicaid Expansion Programs as allowed by federal, state, or local requirements,

(3) If the person or ward qualifies for other means-tested public assistance programs as allowed by federal, state, or local requirements, including, Temporary Assistance for Needy Families, Interim Disability Assistance, Food Stamps, and D.C. Healthcare Alliance;

(4) If the person or ward qualifies for federal disability benefits, including Old Age, Survivors, and Disability Insurance Benefits under Title II of the Social Security Act [42 U.S.C. § 401 et seq.], Rehabilitation Services Administration Payments, Railroad Retirement Board, or Veterans benefits and such benefits constitute the person or ward's sole source of income;

(5) If the person or ward has been found to be unable to pay for habilitation, care, or legal services by any branch of the Superior Court of the District of Columbia; or

(6) If the circumstances listed in paragraphs (1), (2), (3), (4), and (5) of this subsection do not apply, the person or ward may establish, by affidavit or other proof satisfactory to the court, the inability to pay any costs without substantial financial hardship to himself or herself or his or her family.

(b) There is established within the General Fund of the District of Columbia a separate account to be known as the "Guardianship Fund" ("Fund") and to be administered by the court. There is authorized to be appropriated funds necessary for the administration of this section.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; July 25, 1987, D.C. Law 7-17, § 2(a), 34 DCR 3802; Oct. 22, 2008, D.C. Law 17-249, § 2(j), 55 DCR 9206.)

Prior Codifications. — 1981 Ed., § 21-2060.

Effect of amendments. — D.C. Law 17-249 added subsec. (a-1).

Temporary Amendment of Section. — Section 2(j) of D.C. Law 17-100 added subsec. (a-1) to read as follows:

"(a-1) The estate of a person or ward shall be deemed depleted for purposes of this chapter, and all compensation, expenses, and payouts made under this section shall be paid from a fund established by the District:

"(1) If the person or ward qualifies for federal Supplemental Security Income under Title XVI of the Social Security Act;

"(2) If the person or ward qualifies for Medicaid or Medicaid Expansion Programs as allowed by federal, state, or local requirements;

"(3) If the person or ward qualifies for other means-tested public assistance programs as allowed by federal, state, or local requirements, including Temporary Assistance for Needy Families, Interim Disability Assistance, Food Stamps, or D.C. Healthcare Alliance;

"(4) If the person or ward qualifies for federal disability benefits, including Old Age, Survivors, and Disability Insurance Benefits under Title II of the Social Security Act, Rehabilitation Services Administration Payments, Railroad Retirement Board, or Veterans benefits and such benefits constitute the person or ward's sole source of income;

"(5) If the person or ward has been found to be unable to pay for habilitation, care, or legal services by any branch of the Superior Court of the District of Columbia; or

"(6) If the circumstances listed in paragraphs (1), (2), (3), (4), or (5) of this subsection do not apply, the person or ward establishes, by affidavit or other proof satisfactory to the court, the inability to pay any costs without substantial financial hardship to himself or herself or his or her family."

Section 6(b) of D.C. Law 17-100 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(j) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 2(j) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) amendment, see § 2(j) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Legislative history of Law 7-17. — Law 7-17, the "District of Columbia Guardianship and Protective Proceedings Amendment Act of 1987," was introduced in Council and assigned Bill No. 7-199, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 5, 1987, and May 19, 1987, respectively. Signed by the Mayor on June 1, 1987, it was assigned Act No. 7-31 and transmitted to both Houses of Congress for its review.

Legislative history of Law 17-249. — For Law 17-249, see notes following § 21-2002.

References in text. — Title XVI of the Social Security Act, referred to in subsection (a-1) of this section, is codified as 42 U.S.C. § 1381 et seq.

Title II of the Social Security Act, referred to in subdivision (a-1) of this section, is codified as 42 U.S.C. §§ 401 to 433.

Editor's notes. — Appropriations approved: Public Law 104-194, 110 Stat. 2358, the District of Columbia Appropriations Act, 1997, provided that funds appropriated for expenses under § 21-2060, for fiscal year ending September 30, 1997, shall be available for obligations incurred under that Act in each fiscal year since inception in fiscal year 1989.

Prompt Payment of Appointed Counsel. Section 129 of Pub. L. 107-96, Dec. 21, 2001, 115 Stat. 923, provided:

"(a) ASSESSMENT OF INTEREST FOR DELAYED PAYMENTS—If the Superior Court of the District of Columbia or the District of Columbia Court of Appeals does not make a payment described in subsection (b) prior to the expiration of the 45-day period which begins on the date the Court receives a completed voucher for a claim for the payment, interest shall be assessed against the amount of the payment which would otherwise be made to take into account the period which begins on the day after the expiration of such 45-day period and which ends on the day the Court makes the payment.

"(b) PAYMENTS DESCRIBED.—A payment described in this subsection is —

"(1) a payment authorized under section 11-2604 and section 11-2605, D.C. Code (relating to representation provided under the District of Columbia Criminal Justice Act);

"(2) a payment for counsel appointed in proceedings in the Family Division of the Superior Court of the District of Columbia under chapter 23 of title 16, D.C. Code; or

"(3) a payment for counsel authorized under section 21-2060, D.C. Code (relating to representation provided under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986).

"(c) STANDARDS FOR SUBMISSION OF COMPLETED VOUCHERS.—The chief judges of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals shall establish standards and criteria for determining whether vouchers submitted for claims for payments described in subsection (b) are complete, and shall publish and make such standards and criteria available to attorneys who practice before such Courts.

"(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require the assessment of interest against any claim (or portion of any claim) which is denied by the Court involved.

"(e) Effective Date.—This section shall apply with respect to claims received by the Superior Court of the District of Columbia or the District of Columbia Court of Appeals during fiscal year 2002, and claims received previously that remain unpaid at the end of fiscal year 2001, and would have qualified for interest payment under this section."

Prompt Payment of Appointed Counsel. Section 128 of Pub. L. 108-7, Feb. 20, 2003, 117 Stat. 127, provided:

"(a) If the Superior Court of the District of Columbia or the District of Columbia Court of Appeals does not make a payment described in subsection (b) prior to the expiration of the 45-day period which begins on the date the Court receives a completed voucher for a claim for the payment, interest shall be assessed against the amount of the payment which would otherwise be made to take into account the period which begins on the day after the expiration of such 45-day period and which ends on the day the Court makes the payment.

"(b) A payment described in this subsection is—

"(1) a payment authorized under section 11-2604 and section 11-2605, D.C. Official Code (relating to representation provided under the District of Columbia Criminal Justice Act);

"(2) a payment for counsel appointed in proceedings in the Family Court of the Superior Court of the District of Columbia under chapter 23 of title 16, D.C. Official Code; or

"(3) a payment for counsel authorized under section 21-2060, D.C. Official Code (relating to representation provided under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986).

"(c) The chief judges of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals shall establish standards and criteria for determining whether vouchers submitted for claims for payments described in subsection (b) are complete, and shall publish and make such standards and criteria available to attorneys who practice before such Courts.

"(d) Nothing in this section shall be construed to require the assessment of interest against any claim (or portion of any claim) which is denied by the Court involved.

"(e) This section shall apply with respect to claims received by the Superior Court of the District of Columbia or the District of Columbia Court of Appeals during fiscal year 2003 and any subsequent fiscal year."

Uniform Law: This section is based upon § 2-313 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

ANALYSIS

Attorney fees.
Attorney misappropriation and failure to account.
Breach of fiduciary duty.
Construction and application.
Excusable neglect.
Expert witnesses.
Guardian ad litem payments.
Payment from fund.
Payment from personal funds.
Rate of payment.
Travel expenses.

Attorney fees.

Payment of attorney fees incurred in guardianship proceeding from the private funds of the guardianship petitioner or a third party did not require court approval under the Guardianship, Protective Proceedings, and Durable Power of Attorney Act. In re Estate of Grealis, 902 A.2d 821, 2006 D.C. App. LEXIS 414 (2006).

Attorney misappropriation and failure to account.

Fact that attorney, in her capacity as conservator of estate, repeatedly took fees and commissions from estate funds prior to receiving court approval constituted "misappropriation," though court eventually approved such premature payments; court did not ratify attorney's actions. D.C. Code 1981, § 21-2060; Probate Rule 308. In re Utley, 698 A.2d 446, 1997 D.C. App. LEXIS 170 (1997).

Attorney acted with conscious indifference to consequences of his behavior for security of conservator funds, and therefore acted recklessly in misappropriating such funds so as to require disbarment, when attorney, after properly withdrawing his initial fee as conservator of estate pursuant to court authority, twice paid himself commissions from funds in estate account without obtaining court permission beforehand, thus disregarding conservatorship rules for his own convenience. In re Pleshaw, 2 A.3d 169, 2010 D.C. App. LEXIS 492 (2010).

Breach of fiduciary duty.

While the general rule is that a ward's estate is to be charged for guardianship/conservatorship expenses, a conservator or other fiduciary may be liable for additional costs incurred by the estate as a result of the conservator's breach of fiduciary duty. In re Randolph-Bray, 942 A.2d 1142, 2008 D.C. App. LEXIS 78 (2008).

Construction and application.

Application of this section depends on the

definition of the word "depleted" in subsection (a), which would be to "exhaust" or "empty." In re Mitchell, 121 WLR 541 (Super. Ct. 1993).

The Guardianship Fund will not be used as a revolving fund for the convenience of an attorney seeking payment for services. In re Mitchell, 121 WLR 541 (Super. Ct. 1993).

Excusable neglect.

Denial of guardian's motion to late file final petition for compensation on grounds of excusable neglect was abuse of discretion; trial court was given evidence of what appeared to be busy probate practice but instead focused on guardian's use of word "distracted" in motion and did not review and consider evidence in support of motion, trial court did not consider length of guardian's delay in filing petition, and trial court did not make mention of whether amended or prior version of rule governed petition, and no parties were prejudiced by late filing. In re Estate of Yates, 988 A.2d 466, 2010 D.C. App. LEXIS 19 (2010).

Expert witnesses.

Remand was required for trial court to reconsider its denial of payment for adult's expert witness in conservatorship proceeding from adult's estate funds, even though trial court stated that it would deny compensation to expert because adult's mother had retained his services and, therefore, should be responsible for payment; adult's attorney called expert as a witness in support of case that she presented on adult's behalf, attorney had a responsibility to represent adult zealously and apparently thought it necessary to call expert, and it was not clear that trial court considered any request for compensation in that light. In re McMillan, 940 A.2d 1027, 2008 D.C. App. LEXIS 15 (2008).

Guardian ad litem payments.

Trial court, in determining guardian's petition for compensation for services rendered to disabled ward, was required to determine and explain what services guardian appropriately rendered, hours of service guardian provided, and factors court relied upon in setting rates of reasonable compensation for those services. In re Al-Baseer, 19 A.3d 341, 2011 D.C. App. LEXIS 231 (2011).

Guardian's status as the spouse of disabled ward did not preclude guardian from obtaining compensation for services rendered, pursuant to statute providing that any guardian is entitled to compensation for services rendered in connection with a guardianship. In re Al-Baseer, 19 A.3d 341, 2011 D.C. App. LEXIS 231 (2011).

Attorney appointed as guardian ad litem for plaintiff in civil action alleging medical malpractice and assault and battery was not entitled to compensation under Guardianship Fund for ascertaining information concerning plaintiff's mental competency and for providing legal services to plaintiff in civil action; Guardianship Act did not authorize appointment of guardian ad litem for such purposes, superior court, which was not acting through its probate division, did not purport to appoint attorney pursuant to Act's procedures, and attorney was not providing services in a protective arrangement. Sullivan v. District of Columbia, 829 A.2d 221, 2003 D.C. App. LEXIS 477 (2003).

Where the case was disposed of without the imposition of sometimes burdensome ongoing court supervision primarily through the efforts of the guardian ad litem, the court ordered payment to the guardian ad litem. In re E.R., 122 WLR 501 (Super. Ct. 1994).

Payment from fund.

Attorney who was appointed as general conservator and guardian for patient was entitled to have patient's estate pay for attorney fees he incurred in that capacity, though attorney's appointment was vacated as a result of successful appeal by patient's niece who the power to make health care decisions for patient under patient's health care proxy, as the issue of whether a fiduciary appointed by the probate court was due compensation from the subject's estate under the Guardianship Act did not depend on whether the probate court's appointment was in error, service in good faith pursuant to a court order was compensable, attorney did not act outside of the scope of his court-granted authority, and attorney had performed his services in good faith. In re Orshansky, 952 A.2d 199, 2008 D.C. App. LEXIS 283 (2008).

Court-appointed examiner's fees and costs in intervention proceeding should be paid from estate of 98-year-old subject, who lived in her own home, which was unencumbered and assessed at 378,720, and not from District of Columbia's Guardian Fund; subject's estate would not be exhausted if funds were removed from it to pay court-appointed participants, such as examiner. In re Frances Bagby, 135 WLR 337 (Super. Ct. 2007).

This section does not permit payment from the Guardianship Fund by the taxpayers for legal services unless the subject's estate would be exhausted or emptied by payment from his or her estate. In re Mitchell, 121 WLR 541 (Super. Ct. 1993).

Where an attorney is owed money for his or her legal services, where the subject's estate is not liquid and cash-poor, and where the attorney desires payment from the Guardianship Fund, the court will examine the current nature of the subject's estate and determine if the subject's assets will be depleted, and will then make decisions regarding appropriate disbursement from the Fund under the current

facts known to it. In re Mitchell, 121 WLR 541 (Super. Ct. 1993).

If the estate consists of some unsold real property, the court cannot find that the estate is bereft of all assets such as to justify payment from the Guardianship Fund, in which case the real property will have to be sold for the attorney to be paid, unless the subject is living on the real property. In re Mitchell, 121 WLR 541 (Super. Ct. 1993).

The court, when examining requests for Guardianship Fund payments, will ignore a burial fund if it is within the maximum amount allowable under the District of Columbia and federal public assistance regulations. In re Mitchell, 121 WLR 541 (Super. Ct. 1993).

Payment from personal funds.

Trial court could not impose sanction against attorney who represented personal representative of estate in estate-related matter, on ground that attorney failed to obtain court's approval before accepting compensation from personal representative's personal funds for estate-related services; the governing statute did not require such court approval, and even if attorney was on notice that trial court had required prior court approval in a previous matter that attorney had worked on, the previous matter was an intervention case involving a different statute, which was recently determined to not require prior court approval where the fee came from personal funds. In re Estate of Wilson, 935 A.2d 323, 2007 D.C. App. LEXIS 648 (2007).

Rate of payment.

Under the unusual circumstance of requiring the fee to be paid by an unwilling subject in an intervention proceeding, where the petition was not granted, a rate of $175 per hour was imposed. In re E.R., 122 WLR 501 (Super. Ct. 1994).

The maximum hour rounding that should be permitted, and which the vast majority of attorneys practice, is to a tenth of an hour. In re Estate of Torchiana, 121 WLR 2477 (Super. Ct. 1993).

Travel expenses.

Conservator's claims for travel time to and from her home and for parking fees at the courthouse were disallowed. In re Allen, 120 WLR 2721 (Super. Ct. 1992).

§ 21-2061. Death, resignation, or removal of conservator.

The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. Upon the conservator's death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the predecessor.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2061.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 2-314 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

In general.

Successor limited conservator of estate, who was removed after she failed to comply with order to obtain a bond, was not entitled to an oral hearing prior to removal, where conservator failed, in her motion for reconsideration and in her appeal, to state the reasons why she believed good cause did not exist to remove her. In re Estate of Greene, 829 A.2d 506, 2003 D.C. App. LEXIS 486 (2003).

While a hearing is required prior to the removal of a conservator, the hearing need not inevitably be an oral one; rather a hearing in certain circumstances may be held through written submission. In re Estate of Greene, 829 A.2d 506, 2003 D.C. App. LEXIS 486 (2003).

Provisions of Guardianship, Protective Proceedings, and Durable Power of Attorney Act manifest legislative intent to confer upon trial court considerable discretion in deciding whether guardian should be removed or a conservator replaced. D.C. Code 1981, §§ 21-2001 to 21-2085. In re Langon, 663 A.2d 1248, 1995 D.C. App. LEXIS 165 (1995).

Denial of petition to remove guardians and conservator was not an abuse of discretion where detailed interviews of ward showed ward wanted to remain in guardian's home and per-

son seeking to change guardians produced merely hearsay and speculation. In re Langon, 663 A.2d 1248, 1995 D.C. App. LEXIS 165 (1995).

§ 21-2062. Petitions for orders subsequent to appointment.

(a) Any person interested in the welfare of an individual for whom a conservator has been appointed may petition the court for an order:

(1) Requiring bond, additional bond, or reducing bond;

(2) Requiring a special accounting for the administration of the trust;

(3) Directing distribution;

(4) Removing the conservator and appointing a temporary or successor conservator; or

(5) Granting other appropriate relief.

(b) A conservator may petition the court for instructions concerning fiduciary responsibility.

(c) Upon notice and hearing, the court may give appropriate instructions or make any appropriate order.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2062.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 2-315 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

§ 21-2063. General duty of conservator.

A conservator, in relation to powers conferred by this subchapter, or implicit in the title acquired by virtue of the proceeding, shall act as a fiduciary and observe the standards of care applicable to trustees.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2063.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 2-316 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

Liabilities of conservator.

Conservator was personally liable for penalties or interest charges that accrued due to failure of conservator to file tax returns for estate. D.C. Code 1981, §§ 21-2063, 21-2070(c)(17), 47-1805.2(2). In re Estate of Elkins, 692 A.2d 910, 1995 D.C. App. LEXIS 62 (1995).

§ 21-2064. Inventory and records.

Within 60 days after appointment, each conservator shall prepare and file with the court a complete inventory of the estate subject to the conservatorship

together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits. The conservator shall provide a copy to the protected individual unless disappeared, detained by a foreign power, or held hostage by someone other than a foreign power. A copy also shall be provided to any guardian.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2064.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 2-317 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

§ 21-2065. Accounts.

(a) Each conservator shall account to the court for administration of the trust upon resignation or removal, at least annually on the anniversary date of appointment, and at other times as the court may direct. On termination of the protected individual's incapacity, a conservator shall account to the court, to the formerly protected individual, or the successors of that individual. Subject to appeal or vacation within the time permitted, an order after notice and hearing allowing an intermediate account of a conservator adjudicates liabilities concerning the matters considered in connection with the order, and an order, following notice and hearing, allowing a final account adjudicates all previously unsettled liabilities of the conservator to the protected individual or the protected individual's successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate to be made in any manner the court specifies.

(b) Upon appointment, a conservator shall develop an individual conservatorship plan together with the guardian and to the maximum extent possible, the incapacitated individual. The plan shall specify:

(1) The services that are necessary to manage the financial resources designated by the order of the court;

(2) The means through which those services will be provided;

(3) The manner in which the incapacitated individual, guardian, conservator, or any other individual who has been appointed to serve in that capacity will exercise and share their decision-making authority;

(4) The policies and procedures governing the expenditure of funds; and

(5) Other items that will assist in the management of the designated financial resources and in fulfilling the needs of the incapacitated individual, the terms of the court's order, and the duties of the conservator.

(c) The individual conservatorship plan shall be submitted to the court not more than 60 days after the conservator has been appointed, together with a complete inventory of the designated financial resources. The inventory shall include an oath or affirmation that, to the best of the conservator's knowledge, it is complete and accurate.

(d) A conservator shall submit a report to the court:

(1) At least annually;

(2) When the court orders additional reports to be filed;

(3) When there is a significant change in the capacity of the incapacitated individual to manage his or her financial resources;

(4) When the conservator resigns or is removed; and

(5) When the conservatorship is terminated.

(e) The court shall require that a copy of the individual conservatorship plan and a copy of the inventory be sent to:

(1) The incapacitated individual;

(2) The attorney of record for each party;

(3) The individual most closely related to the subject of the intervention proceeding by blood, marriage, or domestic partnership unless that individual's name or whereabouts is unknown and cannot be reasonably ascertained;

(4) The individual or facility, if any, having custody of the subject of the intervention proceeding;

(5) The individual, if any, proposed for appointment by a will as a guardian; and

(6) The individual, if any, appointed or proposed for appointment as guardian ad litem.

(f) The conservator shall be responsible for sending the required copies delineated in subsection (e) of this section and shall bear the cost of the mailings.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Apr. 4, 2006, D.C. Law 16-79, § 7(c), 53 DCR 1035.)

Prior Codifications. — 1981 Ed., § 21-2065.

Effect of amendments. — D.C. Law 16-79, in subsec. (e)(3), substituted "blood, marriage, or domestic partnership" for "blood or marriage".

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 21-2011.

Editor's notes. — Uniform Law: This section is based upon § 2-318 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

Liability of conservator.

Conservator was liable for approximately $300 which had been withdrawn from ward's personal bank account but not accounted for, despite conservator's contention that disputed withdrawals were made by nursing home. D.C. Code 1981, § 21-2065. In re Estate of Elkins, 692 A.2d 910, 1995 D.C. App. LEXIS 62 (1995).

§ 21-2066. Conservators; title by appointment.

(a) The appointment of a conservator vests in the conservator title as trustee to all property of the protected individual presently held or after acquired, or to the part of the property specified in the order, including title to any property held for the protected individual by custodians or attorneys-in-fact. An order specifying that only a part of the property of the protected individual vests in the conservator creates a limited conservatorship.

(b) Except as otherwise provided in this chapter, the interest of the protected individual in property vested in a conservator by this section is not transferable or assignable by the protected individual. An attempted transfer

or assignment by the protected individual, though ineffective to affect property rights, may generate a claim for restitution or damages.

(c) Neither property vested in a conservator by this section nor the interest of the protected person in that property is subject to levy, garnishment, or similar process, except as provided in an order issued in a protective proceeding.

(d) A claimant whose claim has not been paid may petition the court for a determination of the claim at any time before the claim is barred by the applicable statute of limitations and, upon due proof, may procure an order for the claim's allowance, payment, or security from the estate. If a proceeding is pending against a protected person at the time of the appointment of a conservator or is initiated against the protected person after the appointment, the moving party shall give notice to the conservator whenever the proceeding may result in a claim against the estate.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2066.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 2-319 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

§ 21-2067. Recording of conservator's letters.

(a) Letters of conservatorship are evidence of the transfer of all assets, or the part of assets specified in the letters, of a protected individual to the conservator. An order terminating a conservatorship is evidence of the transfer of all assets subjected to the conservatorship from the conservator to the protected individual or to the personal representative of the individual.

(b) Letters of conservatorship and orders terminating conservatorships shall be filed or recorded in the Office of the Recorder of Deeds to give record notice of title as between the conservator and the protected individual.

(c) Letters of conservatorship shall be filed or recorded by the conservator and the conservator shall bear the costs of the filings. If the estate would be depleted by the payment of filing fees, the Recorder of Deeds may waive the fees.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2067.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 2-320 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

§ 21-2068. Sale, encumbrance, or transaction involving conflict of interest; voidable; exceptions.

Any sale or encumbrance to a conservator, the spouse, domestic partner,

agent, attorney of a conservator, or any corporation, trust, or other organization in which the conservator has a substantial beneficial interest, or any other transaction involving the estate being administered by the conservator that is affected by a substantial conflict between fiduciary and personal interests is voidable, unless the transaction is approved by the court after a hearing as directed. Notice of the hearing shall be in the form and manner as prescribed in sections 21-2042(c) and 21-2031(b) and shall be served on the following individuals:

(1) The incapacitated individual;

(2) The attorney of record for each party;

(3) The individual most closely related to the subject of the intervention proceeding by blood, marriage, or domestic partnership, unless that individual's name or whereabouts is unknown and cannot be reasonably ascertained;

(4) The individual or facility, if any, having custody of the subject of the intervention proceeding;

(5) The individual, if any, proposed for appointment by will as a guardian; and

(6) The individual, if any, appointed or proposed for appointment as guardian ad litem.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Apr. 4, 2006, D.C. Law 16-79, § 7(d), 53 DCR 1035.)

Prior Codifications. — 1981 Ed., § 21-2068.

Effect of amendments. — D.C. Law 16-79, in the lead-in language, substituted "the spouse, domestic partner," for "the spouse,"; and in par. (3), substituted "blood, marriage, or domestic partnership" for "blood or marriage".

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 21-2011.

Editor's notes. — Uniform Law: This section is based upon § 2-321 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

§ 21-2069. Persons dealing with conservators; protection.

(a) A person who in good faith either assists or deals with a conservator for value in any transaction other than those requiring a court order as provided in section 21-2055(c) is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of power or the propriety of its exercise, but restrictions on powers of conservators that are endorsed on letters as provided in section 21-2072 are effective as to third persons. A person is not bound to see the proper application of estate assets paid or delivered to a conservator.

(b) The protection expressed in this section extends to any procedural irregularity or jurisdictional defect occurring in proceedings leading to the issuance of letters and is not a substitute for protection provided by comparable provisions of the law relating to commercial transactions or to simplifying transfers of securities by fiduciaries.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2069.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 2-322 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

§ 21-2070. Powers of conservator in administration.

(a) Subject to limitation provided in section 21-2072, a conservator has all of the powers conferred in this section and any additional powers conferred by the law of the District.

(b) Without court authorization or confirmation, a conservator may invest and reinvest funds of the estate as would a trustee.

(c) A conservator, acting reasonably in efforts to accomplish a purpose of the appointment, may act without court authorization or confirmation, to perform the following:

(1) Collect, hold, and retain assets of the estate including land in another jurisdiction, until judging that disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested;

(2) Receive additions to the estate;

(3) Continue or participate in the operation of any business or other enterprise;

(4) Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary capacity, holds an undivided interest;

(5) Invest and reinvest estate assets in accordance with subsection (b) of this section;

(6) Deposit estate funds in a local or federally insured financial institution, including a financial institution operated by the conservator;

(7) Acquire or dispose of an estate asset, including land in another jurisdiction, for cash or on credit, at public or private sale, and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(8) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;

(9) Subdivide, develop, or dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation or exchange, partition by giving or receiving considerations, and dedicate easements to public use without consideration;

(10) Enter, for any purpose, into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

(11) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a polling or agreement;

(12) Grant an option involving disposition of an estate asset and take an option for the acquisition of any asset;

(13) Vote a security, in person or by general or limited proxy;

(14) Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(15) Sell or exercise stock-subscription or conversion rights;

(16) Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(17) Insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;

(18) Borrow money to be repaid from estate assets or otherwise, advance money for the protection of the estate or the protected individual and for all expenses, losses, and liabilities sustained in the administration of the estate or because of the holding or ownership of any estate assets, for which the conservator has a lien on the estate as against the protected individual for advances so made;

(19) Pay or contest any claim, settle a claim by or against the estate or the protected individual by compromise, arbitration, or otherwise, and release, in whole or part, any claim belonging to the estate to the extent the claim is uncollectible;

(20) Pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;

(21) Allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, amortization, or for depletion in mineral or timber properties;

(22) Pay any sum distributable to a protected individual or dependent of the protected individual by paying the sum to the distributee or by paying the sum for the use of the distributee to the guardian of the distributee, or, if none, to a relative or other person having custody of the distributee;

(23) Employ persons, including attorneys, auditors, investment advisors, or agents to advise or assist in the performance of administrative duties, act upon their recommendation without independent investigation, and instead of acting personally, employ 1 or more agents to perform any act of administration, whether discretionary or not;

(24) Prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and for the protection of the conservator in the performance of fiduciary duties; and

(25) Execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.

(d) A conservator or a guardian who exercises a settlor's power to consent to the modification or termination of a noncharitable irrevocable trust under section 19-1304.11(a), or who exercises a settlor's powers with respect to revocation, amendment, or distribution of trust property under section 19-1306.02(f), may do so only with the approval of the court supervising the conservatorship or guardianship upon a finding by the court that the action is not inconsistent with the trust purposes.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Mar. 24, 1998, D.C. Law

12-81, § 14(v), 45 DCR 745; Mar. 10, 2004, D.C. Law 15-104, § 3(b), 51 DCR 208.)

Prior Codifications. — 1981 Ed., § 21-2070.

Effect of amendments. — D.C. Law 15-104 added subsec. (d).

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-2011.

Legislative history of Law 15-104. — For Law 15-104, see notes following § 21-1721.

Editor's notes. — Uniform Law: This section is based upon § 2-323 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

ANALYSIS

Construction and application.
Discretion of court.
Legal fees.
Settlement of claims.
Taxes.

Construction and application.

Under subdivision (c)(19) of this section, the D.C. Superior Court has additional plenary powers of conservatorship which it could exercise on behalf of the subject of a guardianship proceeding over which it has jurisdiction. Estate of Charuhas, 121 WLR 147 (Super. Ct. 1993).

Discretion of court.

Trial court abused its discretion, in denying, in part, the request for counsel fees submitted by counsel retained by guardian/conservator, i.e., trial court denied counsel fees for preparing the inventory, annual accounting, and conservatorship and guardianship reports, where trial court, while agreeing that counsel should receive reasonable compensation for his legal services, did not provide any explanation why it considered some services to be legal and others to be fiduciary, and provided no explanation why counsel would not receive compensation for non-legal services provided to guardian/conservator as the fiduciary. Snead v. Watkins (In re Estate of McDaniel), 953 A.2d 1021, 2008 D.C. App. LEXIS 286 (2008).

Legal fees.

Paralegals are persons properly employed under the powers a conservator has in his or her administrative capacity; however, because paralegal fees are for legal or quasilegal services, they should generally be included in a petition for compensation, and may not be used as a means of supplanting a lawyer's office overhead expenses. In re Johns, 120 WLR 2693 (Super. Ct. 1992).

Fees totaling $7,952.90 for freelance paralegals was not a reasonable expenditure, given the size of the estate, given the fact that the conservator hired outside freelance paralegals whenever he chose, and where time records from these paralegals revealed that considerable time was charged to the estate for performing what was, in essence, social work, bookkeeping, and secretarial duties. In re Johns, 120 WLR 2693 (Super. Ct. 1992).

Settlement of claims.

Conservator was authorized by statute to abandon $800 worth of furniture and household items to storage company to compromise storage bill charged to estate of nearly $1,900 and, thus, conservator was not personally liable for value of abandoned property. D.C. Code 1981, § 21-2070(c)(7, 19). In re Estate of Elkins, 692 A.2d 910, 1995 D.C. App. LEXIS 62 (1995).

Taxes.

Conservator was personally liable for penalties or interest charges that accrued due to failure of conservator to file tax returns for estate. D.C. Code 1981, §§ 21-2063, 21-2070(c)(17), 47-1805.2(2). In re Estate of Elkins, 692 A.2d 910, 1995 D.C. App. LEXIS 62 (1995).

Conservator generally is imposed with power and duty to file tax returns and to pay any taxes owed on behalf of the estate, and is generally personally liable to estate for any penalties, interest, or additional tax that may accrue as a result of error. D.C. Code 1981, §§ 21-2070(c)(17), 47-1805.2(2). In re Estate of Elkins, 692 A.2d 910, 1995 D.C. App. LEXIS 62 (1995).

§ 21-2071. Distributive duties and powers of conservator.

A conservator may expend or distribute income or principal of the estate without court authorization or confirmation for the support, education, care, or

benefit of the protected individual and dependents in accordance with the following principles:

(1) The conservator shall consider recommendations relating to the appropriate standard of support, education, and benefit of the protected individual or dependent made by the protected individual and a parent or guardian, if any. The conservator may not be surcharged for sums paid to persons furnishing support, education, or care to the protected individual or a dependent pursuant to the recommendations of a guardian of the protected individual unless the conservator knows that the guardian derives personal financial benefit from the recommendation, including relief from any personal duty of support, or knows that the recommendations are clearly not in the best interest of the protected individual.

(2) The conservator shall expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected individual and dependents with due regard to:

(A) The size of the estate, the probable duration of the conservatorship, and the likelihood that the protected individual, at some future time, may be fully able to be wholly self-sufficient and able to manage business affairs and the estate;

(B) The accustomed standard of living of the protected individual and dependents; and

(C) Other funds or sources used for the support of the protected individual.

(3) The conservator may expend funds of the estate for the support of individuals legally dependent on the protected individual and others who are members of the protected individual's household who are unable to support themselves and who are in need of support.

(4) Funds expended under this section may be paid by the conservator to any person, including the protected individual, to reimburse for expenditures that the conservator might have made, or in advance for services to be rendered to the protected individual if it is reasonable to expect that the services will be performed and advance payments are customary or reasonably necessary under the circumstances.

(5) A conservator, in discharging the responsibilities conferred by court order and this section, shall implement the principles described in section 21-2055(a).

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Mar. 24, 1998, D.C. Law 12-81, § 14(w), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 21-2071.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-2011.

Editor's notes. — Uniform Law: This section is based upon § 2-324 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

CASE NOTES

Discretion of court.

Trial court abused its discretion, in denying, in part, the request for counsel fees submitted by counsel retained by guardian/conservator, i.e., trial court denied counsel fees for preparing the inventory, annual accounting, and conservatorship and guardianship reports, where trial court, while agreeing that counsel should receive reasonable compensation for his legal services, did not provide any explanation why it considered some services to be legal and others to be fiduciary, and provided no explanation why counsel would not receive compensation for non-legal services provided to guardian/conservator as the fiduciary. Snead v. Watkins (In re Estate of McDaniel), 953 A.2d 1021, 2008 D.C. App. LEXIS 286 (2008).

§ 21-2072. Enlargement or limitation of powers of conservator.

Subject to the restrictions in section 21-2055(c), the court may confer on a conservator, at the time of appointment or later, in addition to the powers conferred by sections 21-2070 and 21-2071, any power that the court itself could exercise under section 21-2055(b)(2). The court, at the time of appointment or later, may limit the powers of a conservator otherwise conferred by sections 21-2070 and 21-2071 or previously conferred by the court and may at any time remove or modify any limitations. If the court limits any power conferred on the conservator by section 21-2070 or section 21-2071, or specifies, as provided in section 21-2066(a), that title to some but not all assets of the protected individual vest in the conservator, the limitation or specification of assets subject to the conservatorship shall be endorsed upon the letters of appointment.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2072.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 2-325 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

§ 21-2073. Preservation of estate plan; right to examine.

In investing the estate, selecting assets of the estate for distribution under section 21-2071, and utilizing powers of revocation or withdrawal available for the support of the protected individual and exercisable by the conservator or the court, the conservator and the court shall take into account any estate plan of the protected individual known to them, including a will, any revocable trust of which the individual is settlor, and any contract, transfer, or joint ownership arrangement originated by the protected individual with provisions for payment or transfer of benefits or interests at the individual's death to another. The conservator may examine the will of the protected individual.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2073.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see His-

torical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 2-326 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

§ 21-2074. Personal liability of conservator.

(a) Even if otherwise provided for in the contract, a conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration or distribution of the estate unless the conservator fails to reveal the representative capacity and identify the estate in the contract.

(b) The conservator is personally liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if personally at fault.

(c) Claims based on (1) contracts entered into by a conservator in a fiduciary capacity, (2) obligations arising from ownership or control of the estate, or (3) torts committed in the course of administration of the estate, may be asserted against the estate by proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable for the claim.

(d) Any question of liability between the estate and the conservator personally may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2074.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 2-328 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

§ 21-2075. Termination of proceedings.

The protected individual, conservator, or any other interested person may petition the court to terminate the conservatorship. A protected individual seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing that the incapacity of the protected individual or the need for the protective arrangement has ceased, shall terminate the conservatorship. Upon termination, title to assets of the estate passes to the formerly protected individual or to successors. The order of termination shall provide for expenses of administration and direct the conservator to execute appropriate instruments to evidence the transfer.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2075.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 2-329 of the Uniform

Guardianship and Protective Proceedings Act (1982 Act).

§ 21-2076. Payment of debt and delivery of property to foreign conservator without local proceedings.

(a) Any person indebted to a protected individual or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected individual may pay or deliver it to a conservator, guardian of the estate, or other fiduciary appointed by a court of the state of residence of the protected individual upon being presented with proof of appointment and an affidavit made by or on behalf of the fiduciary stating:

(1) That no protective proceeding relating to the protected individual is pending in the District; and

(2) That the foreign fiduciary is entitled to payment or to receive delivery.

(b) If the person to whom the affidavit is presented is not aware of any protective proceeding pending in the District, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Mar. 24, 1998, D.C. Law 12-81, § 14(x), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 21-2076.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-2011.

Editor's notes. — Uniform Law: This section is based upon § 2-330 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

§ 21-2077. Foreign conservator; proof of authority; bond; powers.

If a conservator has not been appointed in the District and no petition in a protective proceeding is pending in the District, a conservator appointed in the state in which the protected individual resides may file with the court authenticated copies of letters of appointment and copies of any bond. The domiciliary foreign conservator may then exercise, as to assets in the District, all powers of a conservator appointed in the District and may maintain actions and proceedings in the District subject to any conditions imposed upon nonresident parties generally.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2077.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 2-331 of the Uniform Guardianship and Protective Proceedings Act (1982 Act).

Subchapter VII. Durable Power of Attorney.

§ 21-2081. Definition.

A durable power of attorney is a power of attorney by which a principal designates, in writing, another as his or her attorney in fact and the writing contains the words "This power of attorney shall not be affected by subsequent disability or incapacity of the principal, or lapse of time", or "This power of attorney shall become effective upon the disability or incapacity of the principal", or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Cross references. — Durable power of attorney, sufficiency under uniform general power of attorney provisions, see § 21-2102.

Prior Codifications. — 1981 Ed., § 21-2081.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 1 of the Uniform Durable Power of Attorney Act.

§ 21-2082. Durable power of attorney not affected by incapacity.

All acts done by an attorney in fact pursuant to a durable power of attorney during any period of incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were not incapacitated.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2082.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 2 of the Uniform Durable Power of Attorney Act.

§ 21-2083. Relation of attorney in fact to court-appointed fiduciary.

(a) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the estate, or other fiduciary charged with the management of all of the principal's property or all of his or her property except specific exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if he or she were not incapacitated and did not have a disability.

(b) A principal may nominate, by a durable power of attorney, the conservator, guardian of his or her estate, or guardian of his or her person for

consideration by the court if protective proceedings for the principal's person or estate are later commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632; Apr. 24, 2007, D.C. Law 16-305, § 35(c)(4), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 21-2083.

Effect of amendments. — D.C. Law 16-305, in subsec. (a), substituted "incapacitated and did not have a disability" for "disabled or incapacitated".

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 21-501.

Editor's notes. — Uniform Law: This section is based upon § 3 of the Uniform Durable Power of Attorney Act.

§ 21-2084. Power of attorney not revoked until notice.

(a) The death of a principal who has executed a power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.

(b) The incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his successors in interest.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2084.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 4 of the Uniform Durable Power of Attorney Act.

§ 21-2085. Proof of continuance of durable and other powers of attorney by affidavit.

As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney in fact under a power of attorney, durable or otherwise, stating that he or she did not have, at the time of exercise of the power, actual knowledge of the termination of the power by revocation or of the principal's death or incapacity, is conclusive of the nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is recordable in the same manner. This section does not affect any provision in a power of attorney for its termination by expiration of time

or occurrence of an event other than express revocation or a change in the principal's capacity.

(Feb. 28, 1987, D.C. Law 6-204, § 2(a), 34 DCR 632.)

Prior Codifications. — 1981 Ed., § 21-2085.

Legislative history of Law 6-204. — For legislative history of D.C. Law 6-204, see Historical and Statutory Notes following § 21-2001.

Editor's notes. — Uniform Law: This section is based upon § 5 of the Uniform Durable Power of Attorney Act.

Subchapter VIII. Uniform Disclaimer of Property Interests.

§ 21-2091. Right to disclaim interest in property. [Repealed].

Repealed.

(Mar. 6, 1991, D.C. Law 8-204, § 2, 37 DCR 8439; July 25, 1995, D.C. Law 11-30, § 5(a), 42 DCR 1547; Apr. 27, 2001, D.C. Law 13-292, § 806, 48 DCR 2087; Mar. 2, 2007, D.C. Law 16-205, § 3(b), 53 DCR 9063; Mar. 25, 2009, D.C. Law 17-353, § 308, 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 21-2091.

Legislative history of Law 8-204. — Law 8-204, the "District of Columbia Uniform Disclaimer of Property Interests Act of 1990," was introduced in Council and assigned Bill No. 8-84, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 20, 1990, and December 4, 1990, respectively. Signed by the Mayor on December 14, 1990, it was assigned Act No. 8-279 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-30. — Law 11-30, the "Technical Amendments Act of 1995," was introduced in Council and assigned Bill No. 11-58, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on February 7, 1995, and March 7, 1995, respectively. Signed by the Mayor on March 22, 1995, it was assigned Act No. 11-32 and transmitted to both Houses of Congress for its review. D.C. Law 11-30 became effective on July 25, 1995.

Legislative history of Law 13-292. — For Law 13-292, see notes following § 21-309.

Legislative history of Law 16-205. — Law 16-205, the "Uniform Disclaimers of Property Interests Revision Act of 2006", was introduced in Council and assigned Bill No. 16-707, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on July 11, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 25, 2006, it was assigned Act No. 16-505 and transmitted to both Houses of Congress for its review. D.C. Law 16-205 became effective on March 2, 2007.

Legislative history of Law 17-353. — Law 17-353, the "Technical Amendments Act of 2008", was introduced in Council and assigned Bill No. 17-994 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 15, 2009, it was assigned Act No. 17-687 and transmitted to both Houses of Congress for its review. D.C. Law 17-353 became effective on March 25, 2009.

Editor's notes. — Section 1102 of D.C. Law 13-292 provided: "For purposes of Title 5 and Title 9 and sections 801(b), 805, and 806 of Title 8 of this act, the provisions relating to the administration of decedent's estates shall apply only to the estates of decedent's who die on or after the effective date of this act."

D.C. Law 17-353, § 308, made a technical correction in the repeal of this section by D.C. Law 16-205, § 3(b).

New Uniform Disclaimer of Property Interests: See § 19-1501 et seq.

Uniform Law: This section is based upon § 1 of the Uniform Disclaimer of Property Interests Act.

§ 21-2092. Time of disclaimer; delivery. [Repealed].

Repealed.

(Mar. 6, 1991, D.C. Law 8-204, § 3, 37 DCR 8439; Mar. 2, 2007, D.C. Law 16-205, § 3(b), 53 DCR 9063; Mar. 25, 2009, D.C. Law 17-353, § 308, 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 21-2092.

Legislative history of Law 8-204. — For legislative history of D.C. Law 8-204, see Historical and Statutory Notes following § 21-2091.

Legislative history of Law 16-205. — For Law 16-205, see notes following § 21-2091.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 21-2091.

Editor's notes. — D.C. Law 17-353, § 308, made a technical correction in the repeal of this section by D.C. Law 16-205, § 3(b).

Uniform Law: This section is based upon § 2 of the Uniform Disclaimer of Property Interests Act.

§ 21-2093. Form of disclaimer. [Repealed].

Repealed.

(Mar. 6, 1991, D.C. Law 8-204, § 4, 37 DCR 8439; Mar. 2, 2007, D.C. Law 16-205, § 3(b), 53 DCR 9063.)

(Mar. 6, 1991, D.C. Law 8-204, § 4, 37 DCR 8439; Mar. 25, 2009, D.C. Law 17-353, § 308, 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 21-2093.

Legislative history of Law 8-204. — For legislative history of D.C. Law 8-204, see Historical and Statutory Notes following § 21-2091.

Legislative history of Law 16-205. — For Law 16-205, see notes following § 21-2091.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 21-2091.

Editor's notes. — D.C. Law 17-353, § 308, made a technical correction in the repeal of this section by D.C. Law 16-205, § 3(b).

Uniform Law: This section is based upon § 3 of the Uniform Disclaimer of Property Interests Act.

§ 21-2094. Effect of disclaimer. [Repealed].

Repealed.

(Mar. 6, 1991, D.C. Law 8-204, § 5, 37 DCR 8439; Mar. 2, 2007, D.C. Law 16-205, § 3(b), 53 DCR 9063; Mar. 25, 2009, D.C. Law 17-353, § 308, 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 21-2094.

Legislative history of Law 8-204. — For legislative history of D.C. Law 8-204, see Historical and Statutory Notes following § 21-2091.

Legislative history of Law 16-205. — For Law 16-205, see notes following § 21-2091.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 21-2091.

Editor's notes. — D.C. Law 17-353, § 308, made a technical correction in the repeal of this section by D.C. Law 16-205, § 3(b).

Uniform Law: This section is based upon § 4 of the Uniform Disclaimer of Property Interests Act.

§ 21-2095. Waiver and bar. [Repealed].

Repealed.

(Mar. 6, 1991, D.C. Law 8-204, § 6, 37 DCR 8439; Mar. 2, 2007, D.C. Law 16-205, § 3(b), 53 DCR 9063; Mar. 25, 2009, D.C. Law 17-353, § 308, 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 21-2095.

Legislative history of Law 8-204. — For legislative history of D.C. Law 8-204, see Historical and Statutory Notes following § 21-2091.

Legislative history of Law 16-205. — For Law 16-205, see notes following § 21-2091.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 21-2091.

Editor's notes. — D.C. Law 17-353, § 308, made a technical correction in the repeal of this section by D.C. Law 16-205, § 3(b).

Uniform Law: This section is based upon § 5 of the Uniform Disclaimer of Property Interests Act.

§ 21-2096. Remedy not exclusive. [Repealed].

Repealed.

(Mar. 6, 1991, D.C. Law 8-204, § 7, 37 DCR 8439; July 25, 1995, D.C. Law 11-30, § 5(b), 42 DCR 1547; Mar. 2, 2007, D.C. Law 16-205, § 3(b), 53 DCR 9063; Mar. 25, 2009, D.C. Law 17-353, § 308, 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 21-2096.

Legislative history of Law 8-204. — For legislative history of D.C. Law 8-204, see Historical and Statutory Notes following § 21-2091.

Legislative history of Law 11-30. — For legislative history of D.C. Law 11-30, see Historical and Statutory Notes following § 21-2091.

Legislative history of Law 16-205. — For Law 16-205, see notes following § 21-2091.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 21-2091.

Editor's notes. — D.C. Law 17-353, § 308, made a technical correction in the repeal of this section by D.C. Law 16-205, § 3(b).

Uniform Law: This section is based upon § 6 of the Uniform Disclaimer of Property Interests Act.

§ 21-2097. Application. [Repealed].

Repealed.

(Mar. 6, 1991, D.C. Law 8-204, § 8, 37 DCR 8439; July 25, 1995, D.C. Law 11-30, § 5(c), 42 DCR 1547; Mar. 2, 2007, D.C. Law 16-205, § 3(b), 53 DCR 9063; Mar. 25, 2009, D.C. Law 17-353, § 308, 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 21-2097.

Legislative history of Law 8-204. — For legislative history of D.C. Law 8-204, see Historical and Statutory Notes following § 21-2091.

Legislative history of Law 11-30. — For legislative history of D.C. Law 11-30, see Historical and Statutory Notes following § 21-2091.

Legislative history of Law 16-205. — For Law 16-205, see notes following § 21-2091.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 21-2091.

Editor's notes. — D.C. Law 17-353, § 308, made a technical correction in the repeal of this section by D.C. Law 16-205, § 3(b).

Uniform Law: This section is based upon § 7 of the Uniform Disclaimer of Property Interests Act.

§ 21-2098. Uniformity of application and construction. [Repealed].

Repealed.

(Mar. 6, 1991, D.C. Law 8-204, § 8, 37 DCR 8439; July 25, 1995, D.C. Law

11-30, § 5(d), 42 DCR 1547; Mar. 2, 2007, D.C. Law 16-205, § 3(b), 53 DCR 9063; Mar. 25, 2009, D.C. Law 17-353, § 308, 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 21-2098.

Legislative history of Law 8-204. — For legislative history of D.C. Law 8-204, see Historical and Statutory Notes following § 21-2091.

Legislative history of Law 11-30. — For legislative history of D.C. Law 11-30, see Historical and Statutory Notes following § 21-2091.

Legislative history of Law 16-205. — For Law 16-205, see notes following § 21-2091.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 21-2091.

Editor's notes. — D.C. Law 17-353, § 308, made a technical correction in the repeal of this section by D.C. Law 16-205, § 3(b).

Uniform Law: This section is based upon § 8 of the Uniform Disclaimer of Property Interests Act.

CHAPTER 21. UNIFORM GENERAL POWER OF ATTORNEY.

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§ 21-2101. Statutory form of power of attorney.

(a) The following statutory form of power of attorney is legally sufficient:

STATUTORY POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT OF 1998. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I _____ (insert your name and address) appoint _____ (insert the name and address of the person appointed) as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL _____ (A) Real property transactions, except transactions subject to D.C. Official Code § 42-101. _____ (B) Tangible personal property transactions. _____ (C) Stock and bond transactions. _____ (D) Com-

modity and option transactions. _____ (E) Banking and other financial institution transactions. _____ (F) Business operating transactions. _____ (G) Insurance and annuity transactions. _____ (H) Estate, trust, and other beneficiary transactions. _____ (I) Claims and litigation. _____ (J) Personal and family maintenance. _____ (K) Benefits from social security, medicare, medicaid, or other governmental programs, or military service. _____ (L) Retirement plan transactions. _____ (M) Tax matters. _____ (N) ALL OF THE POWERS LISTED ABOVE.

YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS: ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT: _____

_____

_____

_____

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This power of attorney will continue to be effective even though I become disabled, incapacitated, or incompetent.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME DISABLED, INCAPACITATED, OR INCOMPETENT.

I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this _____ day of _____, _____

_____ (Your Signature) _____ (Your Social Security Number)

District of Columbia

This document was acknowledged before me on _____ (Date) by _____ (name of principal) _____

(Signature of notary public)

(Seal) _____

[My commission expires: _____]

BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

(b) A statutory power of attorney is legally sufficient under this chapter if the wording of the form complies substantially with subsection (a) of this

section, the form is properly completed, and the signature of the principal is acknowledged.

(c) If the line in front of line (N) of the form under subsection (a) of this section is initialed, an initial on the line in front of any other power does not limit the powers granted by line (N).

(Sept. 18, 1998, D.C. Law 12-147, § 2, 45 DCR 3853; Apr. 12, 2000, D.C. Law 13-91, § 143(b), 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 21-2101.

Effect of amendments. — D.C. Law 13-91 validated a previously made technical amendment.

Legislative history of Law 12-147. — Law 12-147, the "Uniform Statutory Form Power of Attorney Act of 1998," was introduced in Council and assigned Bill No. 12-157, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 7, 1998, and May 5, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-359 and transmitted to both Houses of Congress for its review. D.C. Law 12-147 became effective on September 18, 1998.

Legislative history of Law 13-91. — Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Editor's notes. — Uniform Law: This section is based upon § 1 of the Uniform Statutory Form Power of Attorney Act.

CASE NOTES

Authority to bring action.

Plaintiff was not authorized to bring suit on behalf of his adopted son, although son was a minor at time allegedly tortious conduct had occurred, where son was older than 18 years of age at time of lawsuit, and power of attorney signed by son was not duly executed because it was not notarized or dated and did not list son's social security number. Ficken v. AMR Corp., 578 F.Supp.2d 134, 2008 U.S. Dist. LEXIS 75434 (2008).

§ 21-2102. Durable power of attorney.

A power of attorney legally sufficient under this chapter is durable to the extent that durable powers are permitted by sections 21-2081 through 21-2085, or other law of the District of Columbia and the power of attorney contains language such as "This power of attorney will continue to be effective if I become disabled, incapacitated, or incompetent," showing the intent of the principal that the power granted may be exercised notwithstanding later disability, incapacity, or incompetency.

(Sept. 18, 1998, D.C. Law 12-147, § 2, 45 DCR 3853; Apr. 12, 2000, D.C. Law 13-91, § 143, 47 DCR 520.)

Cross references. — Durable power of attorney generally, see § 21-2101 et seq.

Prior Codifications. — 1981 Ed., § 21-2102.

Effect of amendments. — D.C. Law 13-91 validated a previously made technical amendment.

Legislative history of Law 12-147. — For legislative history of D.C. Law 12-147, see Historical and Statutory Notes following § 21-2101.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 21-2101.

Editor's notes. — Uniform Law: This section is based upon § 2 of the Uniform Statutory Form Power of Attorney Act.

§ 21-2103. Construction of powers generally.

By executing a statutory power of attorney with respect to a subject listed in section 21-2101(a), the principal, except as limited or extended by the principal in the power of attorney, empowers the agent, for that subject to:

(1) Demand, receive, and obtain by litigation or otherwise, money or other thing of value to which the principal is, may become, or claims to be entitled; and conserve, invest, disburse, or use anything so received for the purposes intended;

(2) Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction, and perform, rescind, reform, release, or modify the contract or another contract made by or on behalf of the principal;

(3) Execute, acknowledge, seal, and deliver a revocation, lease, notice, check, release, or other instrument the agent considers desirable to accomplish a purpose of a transaction;

(4) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

(5) Seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney;

(6) Engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant;

(7) Keep appropriate records of each transaction, including an accounting of receipts and disbursements;

(8) Prepare, execute, and file a record, report, or other document the agent considers desirable to safeguard or promote the principal's interest under a statute or governmental regulation;

(9) Reimburse the agent for expenditures properly made by the agent in exercising the powers granted by the power of attorney; and

(10) In general, do any other lawful act with respect to the subject.

(Sept. 18, 1998, D.C. Law 12-147, § 2, 45 DCR 3853.)

Prior Codifications. — 1981 Ed., § 21-2103.

Legislative history of Law 12-147. — For legislative history of D.C. Law 12-147, see Historical and Statutory Notes following § 21-2101.

Editor's notes. — Uniform Law: This section is based upon § 3 of the Uniform Statutory Form Power of Attorney Act.

§ 21-2104. Construction of power relating to real property transactions.

(a) In a statutory power of attorney, the language granting power with respect to real property transactions empowers the agent to:

(1) Accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or otherwise acquire, an interest in real property or a right incident to real property;

(2) Subject to subsection (b) of this subsection, subdivide, apply for zoning,

rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease, or sublease of real property;

(3) Release, assign, satisfy, and enforce by litigation or otherwise, a mortgage, deed of trust, encumbrance, lien, or other claim to real property which exists or is asserted, except with respect to instruments subject to section 42-101; and

(4) Do any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned, or claimed to be owned, by the principal, including:

(A) Insuring against a casualty, liability, or loss;

(B) Obtaining or regaining possession, or protecting the interest or right, by litigation or otherwise;

(C) Paying, compromising, or contesting taxes or assessments, or applying for and receiving refunds in connection with them; and

(D) Purchasing supplies, hiring assistance or labor, and making repairs or alterations in the real property;

(5) Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

(6) Participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property and receive and hold shares of stock or obligations received in a plan of reorganization, and act with respect to them, including:

(A) Selling or otherwise disposing of them;

(B) Exercising or selling an option, conversion, or similar right with respect to them; and

(C) Voting them in person or by proxy;

(7) Change the form of title of an interest in or right incident to real property; and

(8) Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

(b) This chapter may not be construed to authorize the use of the statutory form power of attorney under this chapter for a transaction that is subject to the execution and recordation requirements of section 42-101.

(Sept. 18, 1998, D.C. Law 12-147, § 2, 45 DCR 3853; Apr. 12, 2000, D.C. Law 13-91, § 143, 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 21-2104.

Effect of amendments. — D.C. Law 13-91 validated a previously made technical amendment.

Legislative history of Law 12-147. — For legislative history of D.C. Law 12-147, see Historical and Statutory Notes following § 21-2101.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 21-2101.

Editor's notes. — Uniform Law: This section is based upon § 1 of the Uniform Statutory Form Power of Attorney Act.

§ 21-2105. Construction of power relating to tangible personal property transactions.

In a statutory power of attorney the language granting power with respect to tangible personal property transactions empowers the agent to:

(1) Accept as a gift or as security for a loan, reject, demand, buy, receive, or otherwise acquire ownership or possession of tangible personal property or an interest in tangible personal property;

(2) Sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, grant options concerning, lease, sublease to others, or otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) Release, assign, satisfy, or enforce by litigation or otherwise, a mortgage, security interest, encumbrance, lien, or other claim on behalf of the principal with respect to tangible personal property or an interest in tangible personal property; and

(4) Do an act of management or conservation with respect to tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(A) Insuring against casualty, liability, or loss;

(B) Obtaining or regaining possession, or protecting the property or interest, by litigation or otherwise;

(C) Paying, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(D) Moving from place to place;

(E) Storing for hire or on a gratuitous bailment; and

(F) Using, altering, and making repairs or alterations.

(Sept. 18, 1998, D.C. Law 12-147, § 2, 45 DCR 3853.)

Prior Codifications. — 1981 Ed., § 21-2105.

Legislative history of Law 12-147. — For legislative history of D.C. Law 12-147, see Historical and Statutory Notes following § 21-2101.

Editor's notes. — Uniform Law: This section is based upon § 5 of the Uniform Statutory Form Power of Attorney Act.

§ 21-2106. Construction of power relating to stock and bond transactions.

In a statutory power of attorney the language granting power with respect to stock and bond transactions empowers the agent to buy, sell, and exchange stocks, bonds, mutual funds, and all other types of securities and financial instruments, except commodity futures contracts, and call and put options on stocks and stock indexes, receive certificates, and other evidences of ownership with respect to securities, exercise voting rights with respect to securities in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

(Sept. 18, 1998, D.C. Law 12-147, § 2, 45 DCR 3853.)

Prior Codifications. — 1981 Ed., § 21-2106.

Legislative history of Law 12-147. — For legislative history of D.C. Law 12-147, see Historical and Statutory Notes following § 21-2101.

Editor's notes. — Uniform Law: This section is based upon § 6 of the Uniform Statutory Form Power of Attorney Act.

§ 21-2107. Construction of power relating to commodity and option transactions.

In a statutory power of attorney the language granting power with respect to commodity and option transactions empowers the agent to buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call and put options on stocks and stock indexes traded on a regulated option exchange, and establish, continue, modify, and terminate option accounts with a broker.

(Sept. 18, 1998, D.C. Law 12-147, § 2, 45 DCR 3853.)

Prior Codifications. — 1981 Ed., § 21-2107.

Legislative history of Law 12-147. — For legislative history of D.C. Law 12-147, see Historical and Statutory Notes following § 21-2101.

Editor's notes. — Uniform Law: This section is based upon § 7 of the Uniform Statutory Form Power of Attorney Act.

§ 21-2108. Construction of power relating to banking and other financial institution transactions.

In a statutory power of attorney the language granting power with respect to banking and other financial institution transactions empowers the agent to:

(1) Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;

(2) Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;

(3) Hire a safe deposit box or space in a vault;

(4) Contract to procure other services available from a financial institution as the agent considers desirable;

(5) Withdraw by check, order, or otherwise money or property of the principal deposited with or left in the custody of a financial institution;

(6) Receive bank statements, vouchers, notices, and similar documents from a financial institution and act with respect to them;

(7) Enter a safe deposit box or vault and withdraw or add to the contents;

(8) Borrow money at an interest rate agreeable to the agent and pledge as security personal property of the principal necessary in order to borrow, pay, renew, or extend the time of payment of a debt of the principal;

(9) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal, or payable to the principal or the principal's order, receive the cash or other proceeds of those transactions, accept a draft drawn by a person upon the principal, and pay it when due;

(10) Receive for the principal and act upon a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument;

(11) Apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution, and give an indemnity or other agreement in connection with letters of credit; and

(12) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

(Sept. 18, 1998, D.C. Law 12-147, § 2, 45 DCR 3853.)

Prior Codifications. — 1981 Ed., § 21-2108.

Legislative history of Law 12-147. — For legislative history of D.C. Law 12-147, see Historical and Statutory Notes following § 21-2101.

Editor's notes. — Uniform Law: This section is based upon § 8 of the Uniform Statutory Form Power of Attorney Act.

§ 21-2109. Construction of power relating to business operating transactions.

In a statutory power of attorney the language granting power with respect to business operating transactions empowers the agent to:

(1) Operate, buy, sell, enlarge, reduce, and terminate a business interest;

(2) To the extent that an agent is permitted by law to act for a principal and subject to the terms of the partnership agreement to:

(A) Perform a duty or discharge a liability and exercise a right, power, privilege, or option that the principal has, may have, or claims to have, under a partnership agreement, whether or not the principal is a partner;

(B) Enforce the terms of a partnership agreement by litigation or otherwise; and

(C) Defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of membership in the partnership;

(3) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of a bond, share, or other instrument of similar character and defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of a bond, share, or similar instrument;

(4) With respect to a business owned solely by the principal:

(A) Continue, modify, renegotiate, extend, and terminate a contract made with an individual or a legal entity, firm, association, or corporation by or on behalf of the principal with respect to the business before execution of the power of attorney;

(B) Determine:

(i) The location of its operation;

(ii) The nature and extent of its business;

(iii) The methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;

(iv) The amount and types of insurance carried; and

(v) The mode of engaging, compensating, and dealing with its accountants, attorneys, and other agents and employees;

(C) Change the name or form of organization under which the business is operated and enter into a partnership agreement with other persons or organize a corporation to take over all or part of the operation of the business; and

(D) Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the business, and control and disburse the money in the operation of the business;

(5) Put additional capital into a business in which the principal has an interest;

(6) Join in a plan of reorganization, consolidation, or merger of the business;

(7) Sell or liquidate a business or part of it at the time and upon the terms the agent considers desirable;

(8) Establish the value of a business under a buy-out agreement to which the principal is a party;

(9) Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business which are required by a governmental agency or instrumentality or which the agent considers desirable, and make related payments; and

(10) Pay, compromise, or contest taxes or assessments and do any other act which the agent considers desirable to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

(Sept. 18, 1998, D.C. Law 12-147, § 2, 45 DCR 3853.)

Prior Codifications. — 1981 Ed., § 21-2109.

Legislative history of Law 12-147. — For legislative history of D.C. Law 12-147, see Historical and Statutory Notes following § 21-2101.

Editor's notes. — Uniform Law: This section is based upon § 9 of the Uniform Statutory Form Power of Attorney Act.

§ 21-2110. Construction of power relating to insurance transactions.

In a statutory power of attorney the language granting power with respect to insurance and annuity transactions empowers the agent to:

(1) Continue, pay the premium or assessment on, modify, rescind, release, or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2) Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents; and select the amount, type of insurance or annuity, and mode of payment;

(3) Pay the premium or assessment on, modify, rescind, release, or terminate a contract of insurance or annuity procured by the agent;

(4) Designate the beneficiary of the contract, but an agent may be named

a beneficiary of the contract, or an extension, renewal, or substitute for it, only to the extent the agent was named as a beneficiary under a contract procured by the principal before executing the power of attorney;

(5) Apply for and receive a loan on the security of the contract of insurance or annuity;

(6) Surrender and receive the cash surrender value;

(7) Exercise an election;

(8) Change the manner of paying premiums;

(9) Change or convert the type of insurance contract or annuity with respect to which the principal has or claims to have a power described in this section;

(10) Change the beneficiary of a contract of insurance or annuity, but the agent may not be designated a beneficiary except to the extent permitted by paragraph (4) of this section;

(11) Apply for and procure government aid to guarantee or pay premiums of a contract of insurance on the life of the principal;

(12) Collect, sell, assign, hypothecate, borrow upon, or pledge the interest of the principal in a contract of insurance or annuity; and

(13) Pay from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

(Sept. 18, 1998, D.C. Law 12-147, § 2, 45 DCR 3853.)

Prior Codifications. — 1981 Ed., § 21-2110.

Legislative history of Law 12-147. — For legislative history of D.C. Law 12-147, see Historical and Statutory Notes following § 21-2101.

Editor's notes. — Uniform Law: This section is based upon § 10 of the Uniform Statutory Form Power of Attorney Act.

This section is based upon § 13 of the Uniform Statutory Form Power of Attorney Act.

§ 21-2111. Construction of power relating to estate, trust, and other beneficiary transactions.

In a statutory power of attorney the language granting power with respect to estate, trust, and other beneficiary transactions empowers the agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled, as a beneficiary, to a share or payment, including to:

(1) Accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund;

(2) Demand or obtain by litigation or otherwise money or other thing of value to which the principal is, may become, or claims to be entitled by reason of the fund;

(3) Initiate, participate in, and oppose litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

(4) Initiate, participate in, and oppose litigation to remove, substitute, or surcharge a fiduciary;

(5) Conserve, invest, disburse, and use anything received for an authorized purpose; and

(6) Transfer an interest of the principal in stocks, bonds, accounts with financial institutions, insurance, and other property, to the trustee of a revocable trust created by the principal as settlor.

(Sept. 18, 1998, D.C. Law 12-147, § 2, 45 DCR 3853.)

Prior Codifications. — 1981 Ed., § 21-2111.

Legislative history of Law 12-147. — For legislative history of D.C. Law 12-147, see Historical and Statutory Notes following § 21-2101.

Editor's notes. — Uniform Law: This section is based upon § 11 of the Uniform Statutory Form Power of Attorney Act.

§ 21-2112. Construction of power relating to claims and litigation.

In a statutory power of attorney the language with respect to claims and litigation empowers the agent to:

(1) Assert and prosecute before a court or administrative agency a claim, a cause of action, counterclaim, offset, and defend against an individual, a legal entity, or government, including suits to recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief;

(2) Bring an action to determine adverse claims, intervene in litigation, and act as amicus curiae;

(3) In connection with litigation, procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

(4) In connection with litigation, perform any lawful act, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and binding the principal in litigation;

(5) Submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation;

(6) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive and execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

(7) Act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, concerning the principal or some other person, with respect to a reorganization proceeding, or a receivership or

application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value; and

(8) Pay a judgment against the principal or a settlement made in connection with litigation and receive and conserve money, or other thing of value paid in settlement of or as proceeds of a claim or litigation.

(Sept. 18, 1998, D.C. Law 12-147, § 2, 45 DCR 3853.)

Prior Codifications. — 1981 Ed., § 21-2112.

Legislative history of Law 12-147. — For legislative history of D.C. Law 12-147, see Historical and Statutory Notes following § 21-2101.

Editor's notes. — Uniform Law: This section is based upon § 12 of the Uniform Statutory Form Power of Attorney Act.

§ 21-2113. Construction of power relating to personal and family maintenance.

(a) In a statutory power of attorney the language granting power with respect to personal and family maintenance empowers the agent to:

(1) Do the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, domestic partner, children, and other individuals customarily or legally entitled to be supported by the principal, including providing living quarters by purchase, lease, or other contract, or paying the operating costs, including interest, amortization payments, repairs, and taxes on premises owned by the principal and occupied by those individuals;

(2) Provide for the individuals described in paragraph (1) of this section normal domestic help; usual vacations and travel expenses; and funds for shelter, clothing, food, appropriate education, and other current living costs;

(3) Pay for the individuals described in paragraph (1) of this section necessary medical, dental, and surgical care, hospitalization, and custodial care;

(4) Continue any provision made by the principal, for the individuals described in paragraph (1) of this section, for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them;

(5) Maintain or open charge accounts for the convenience of the individuals described in paragraph (1) of this section and open new accounts the agent considers desirable to accomplish a lawful purpose; and

(6) Continue payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization or to continue contributions to those organizations.

(b) For the purposes of this section, the term "domestic partner" shall have the same meaning as provided in § 32-701(3).

(Sept. 18, 1998, D.C. Law 12-147, § 2, 45 DCR 3853; Apr. 4, 2006, D.C. Law 16-79, § 7(e), 53 DCR 1035.)

Prior Codifications. — 1981 Ed., § 21-2113.

Effect of amendments. — D.C. Law 16-79, designated the existing text as subsec. (a); in

subsec. (a)(1), substituted "principal's spouse, domestic partner," for "principal's spouse,"; and added subsec. (b).

Legislative history of Law 12-147. — For legislative history of D.C. Law 12-147, see Historical and Statutory Notes following § 21-2101.

Legislative history of Law 16-79. — For Law 16-79, see notes following § 21-2011.

Editor's notes. — Uniform Law: This section is based upon § 10 of the Uniform Statutory Form Power of Attorney Act.

§ 21-2114. Construction of power relating to benefits from social security, medicare, medicaid, or other governmental programs, or military service.

In a statutory power of attorney the language granting power with respect to benefits from social security, medicare, medicaid or other governmental programs, or civil or military service empowers the agent to:

(1) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in section 21-2113(1) [§ 21-2113(a)(1)], and for shipment of their household effects;

(2) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

(3) Prepare, file, and prosecute a claim of the principal to a benefit or assistance, financial or otherwise, to which the principal claims to be entitled, under a statute or governmental regulation;

(4) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive; and

(5) Receive the financial proceeds of a claim of the type described in this section, conserve, invest, disburse, or use anything received for a lawful purpose.

(Sept. 18, 1998, D.C. Law 12-147, § 2, 45 DCR 3853.)

Prior Codifications. — 1981 Ed., § 21-2114.

Legislative history of Law 12-147. — For legislative history of D.C. Law 12-147, see Historical and Statutory Notes following § 21-2101.

Editor's notes. — Uniform Law: This section is based upon § 14 of the Uniform Statutory Form Power of Attorney Act.

§ 21-2115. Construction of power relating to retirement plan transactions.

In a statutory power of attorney the language granting power with respect to retirement plan transactions empowers the agent to:

(1) Select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals;

(2) Designate beneficiaries under those plans and change existing designations;

(3) Make voluntary contributions to those plans;

(4) Exercise the investment powers available under any self-directed retirement plan;

(5) Make "rollovers" of plan benefits into other retirement plans;

(6) If authorized by the plan, borrow from, sell assets to, and purchase assets from the plan; and

(7) Waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed.

(Sept. 18, 1998, D.C. Law 12-147, § 2, 45 DCR 3853.)

Prior Codifications. — 1981 Ed., § 21-2115.

Legislative history of Law 12-147. — For legislative history of D.C. Law 12-147, see Historical and Statutory Notes following § 21-2101.

Editor's notes. — Uniform Law: This section is based upon § 15 of the Uniform Statutory Form Power of Attorney Act.

§ 21-2116. Construction of power relating to tax matters.

In a statutory power of attorney the language granting power with respect to tax matters empowers the agent to:

(1) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act returns, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under Internal Revenue Code, section 2032A or any successor section, closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;

(2) Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;

(3) Exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) Act for the principal in all tax matters for all periods before the Internal Revenue Service and any other taxing authority.

(Sept. 18, 1998, D.C. Law 12-147, § 2, 45 DCR 3853.)

Prior Codifications. — 1981 Ed., § 21-2116.

Legislative history of Law 12-147. — For legislative history of D.C. Law 12-147, see Historical and Statutory Notes following § 21-2101.

References in text. — Internal Revenue Code, § 2032A, referred to in (1), is 26 U.S.C. § 2032A.

Editor's notes. — Uniform Law: This section is based upon § 16 of the Uniform Statutory Form Power of Attorney Act.

§ 21-2117. Existing interests; foreign interests.

The powers described in sections 21-2103 through 21-2116 are exercisable equally with respect to an interest the principal has when the power of attorney is executed or acquires later, whether or not the property is located in the District of Columbia, and whether or not the powers are exercised or the power of attorney is executed in the District of Columbia.

(Sept. 18, 1998, D.C. Law 12-147, § 2, 45 DCR 3853.)

Prior Codifications. — 1981 Ed., § 21-2117.

Legislative history of Law 12-147. — For legislative history of D.C. Law 12-147, see Historical and Statutory Notes following § 21-2101.

Editor's notes. — Uniform Law: This section is based upon § 17 of the Uniform Statutory Form Power of Attorney Act.

§ 21-2118. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

(Sept. 18, 1998, D.C. Law 12-147, § 2, 45 DCR 3853; Apr. 12, 2000, D.C. Law 13-91, § 143, 47 DCR 520.)

Prior Codifications. — 1981 Ed., § 21-2118.

Effect of amendments. — D.C. Law 13-91 validated a previously made technical amendment.

Legislative history of Law 12-147. — For legislative history of D.C. Law 12-147, see Historical and Statutory Notes following § 21-2101.

Legislative history of Law 13-91. — For Law 13-91, see notes following § 21-2101.

Editor's notes. — Uniform Law: This section is based upon § 18 of the Uniform Statutory Form Power of Attorney Act.

CHAPTER 22. HEALTH-CARE DECISIONS.

Sec.
21-2201. Purpose.
21-2202. Definitions.
21-2203. Presumption of capacity.
21-2204. Certification of incapacity.
21-2205. Durable power of attorney for health care.
21-2206. Rights and duties of attorney in fact.
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21-2212. Effect of chapter.
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§ 21-2201. Purpose.

The purpose of this chapter is to affirm the right of all competent adults to control decisions relating to their own health care and to have their rights and intentions in health care matters respected and implemented by others if they become incapable of making or communicating decisions for themselves.

(Mar. 16, 1989, D.C. Law 7-189, § 2, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(b), 40 DCR 6311; Mar. 24, 1998, D.C. Law 12-81, § 14(y), 45 DCR 745.)

Prior Codifications. — 1981 Ed., § 21-2201.

Legislative history of Law 7-189. — Law 7-189, the "Health-Care Decisions Act of 1988," was introduced in Council and assigned Bill No. 7-131, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 25, 1988, and November 15, 1988, respectively. Signed by the Mayor on December 1, 1988, it was assigned Act No. 7-251 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — D.C. Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Editor's notes. — As to life sustaining treatment, termination of treatment, due process, termination of nutrition and hydration, clear and convincing evidence standard, and substituted judgment of family members, see Cruzan by Cruzan v. Director, Missouri Dept. of Health, U.S.Mo. 1990, 110 S.Ct. 2841, 497 U.S. 261, 111 L.Ed.2d 224 (1990).

As to equal protection, assisted suicide ban, right to withdraw life-sustaining medical treatment, see Vacco v. Quill, U.S.N.Y. 1997, 117 S.Ct. 2293, 521 U.S. 793, 138 L.Ed.2d 834, concurring opinion 117 S.Ct. 2302, 521 U.S. 702, 138 L.Ed.2d 772 (1990).

CASE NOTES

Construction and application.

Health Care Decisions Act, establishing procedures for making health care decisions for incompetent adults, does not govern decision whether to medicate defendant involuntarily to render him competent to stand trial. D.C. Code 1981, §§ 21-2201(a), 21-2203 to 21-2205, 22-2210, 24-301(a). Tran Van Khiem v. United States, 612 A.2d 160, 1992 D.C. App. LEXIS 218 (1992).

§ 21-2202. Definitions.

For the purposes of this chapter, the term:

(1) "Attorney in fact" means the person who receives the power of attorney for health-care decisions pursuant to the provisions of this chapter.

(1A) "Close friend" means any adult who has exhibited significant care and concern for the patient, and has maintained regular contact with the patient so as to be familiar with his or her activities, health, and religious and moral beliefs.

(2) "District" means the District of Columbia.

(2A) "Domestic partner" means an adult person living with, but not married to, another adult person in a committed, intimate relationship. The term "domestic partner" shall include any adult who has registered as a domestic partner under the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701 et seq.), as well as any adult who has registered as a domestic partner in a substantially equivalent program administered by another jurisdiction.

(2B) "Domestic partnership" means 2 adult persons living together, but not married, in a committed, intimate relationship. The term "domestic partnership" shall include any relationship registered under § 32-701(4), as well as any relationship in another jurisdiction that includes a substantially equivalent registration requirement, including those relationships recognized under § 32-702(i).

(3) "Durable power of attorney for health care" means a legally enforceable document that:

(A) Is executed in the District in a manner consistent with this chapter or validly executed in another jurisdiction pursuant to similar provisions of the law of that jurisdiction; and

(B) Creates a power of attorney for health-care decisions, which is effective upon, and only during incapacitation and is unaffected by the subsequent disability or incapacity of the principal as defined in this chapter.

(4) "Health-care provider" means any person or organizational entity, including health care facilities as defined in § 44-501, licensed or otherwise authorized to provide health-care services in the District.

(5) "Incapacitated individual" means an adult individual who lacks sufficient mental capacity to appreciate the nature and implications of a health-care decision, make a choice regarding the alternatives presented or communicate that choice in an unambiguous manner.

(5A) "Member of a religious order or diocesan priest" means an unmarried adult who, by vow or other bond of commitment, voluntarily undertakes a style of living under the rule and direction of a religious order or community that has been established for religious purposes and has been recognized and approved as a religious order or community by a church.

(6) "Principal" means a person who is competent to make health-care decisions for his or her own benefit or on his or her own account.

(6A) "Qualified psychologist" means a person who is licensed pursuant to § 3-1205.01 and has:

(A) One year of formal training within a hospital setting; or

(B) Two years of supervised clinical experience in an organized health-care setting, one year of which must be post-doctoral.

(7) "Religious superior" means a bishop or a member of a religious order who, under the approved constitution, laws, statutes, bylaws, or rules of the religious order or community, exercises authority over the particular community or unit of the religious order to which the member of the religious order or community belongs.

(Mar. 16, 1989, D.C. Law 7-189, § 3, 35 DCR 8653; Mar. 11, 1992, D.C. Law 9-67, § 2(a), 39 DCR 12; Feb. 5, 1994, D.C. Law 10-68, § 23(c), 40 DCR 6311; Mar. 24, 1998, D.C. Law 12-81, § 14(z), 45 DCR 745; Apr. 20, 1999, D.C. Law 12-264, § 57(c), 46 DCR 2118; June 21, 2003, D.C. Law 15-17,§ 2(a), 50 DCR 3387; Sept. 12, 2008, D.C. Law 17-231, § 22(g), 55 DCR 6758; Oct. 22, 2008, D.C. Law 17-249, § 3(a), 55 DCR 9206.)

Prior Codifications. — 1981 Ed., § 21-2202.

Effect of amendments. — D.C. Law 15-17 added pars. (1A) and (2A).

D.C. Law 17-231 added par. (2B).

D.C. Law 17-249 added par. (6A).

Temporary Amendment of Section. — Section 3(a) of D.C. Law 16-46 added par. (6A) to read as follows:

"(6A) 'Qualified psychologist' means a person who is licensed pursuant to § 3-1205.01 and has:

"(A) One year of formal training within a hospital setting; or

"(B) Two years of supervised clinical experience in an organized health care setting, one year of which must be post-doctoral."

Section 6(b) of D.C. Law 16-46 provided that the act shall expire after 225 days of its having taken effect.

Section 3(a) of D.C. Law 16-194 added a new par. (6A) to read as follows:

"(6A) 'Qualified psychologist' means a person who is licensed pursuant to § 3-1205.01 and has:

"(A) One year of formal training within a hospital setting; or

"(B) Two years of supervised clinical experience in an organized health-care setting, one year of which must be post-doctoral."

Section 6(b) of D.C. Law 16-194 provided that the act shall expire after 225 days of its having taken effect.

Section 3(a) of D.C. Law 17-100 added par. (6A) to read as follows:

"(6A) 'Qualified psychologist' means a person who is licensed pursuant to § 3-1205.01 and has:

"(A) One year of formal training within a hospital setting; or

"(B) Two years of supervised clinical experience in an organized health-care setting, one year of which must be post-doctoral."

Section 6(b) of D.C. Law 17-100 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(a) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005 (D.C. Act 16-190, October 28, 2005, 52 DCR 10021).

For temporary (90 day) amendment of section, see § 3(a) of Health-Care Decisions for Persons with Mental Retardation and Development Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-262, January 26, 2006, 53 DCR 795).

For temporary (90 day) amendment of section, see § 3(a) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 3(a) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 3(a) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 3(a) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) amendment, see § 3(a) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 7-189. — For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

Legislative history of Law 9-67. — Law 9-67, the "Health-Care Decisions Amendment Act of 1991," was introduced in Council and assigned Bill No. 9-41, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 5, 1991, and December 3, 1991, respectively. Signed by the Mayor on December 20, 1991, it was assigned Act No. 9-118 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-2201.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 15-17. — Law 15-17, the "Health-Care Decisions Act of 2003", was introduced in Council and assigned Bill No. 15-37, which was referred to Committee on the Judiciary. The Bill was adopted on first and second readings on March 4, 2003, and April 1, 2003, respectively. Signed by the Mayor on April 16, 2003, it was assigned Act No. 15-64 and transmitted to both Houses of Congress for its review. D.C. Law 15-17 became effective on June 21, 2003.

Legislative history of Law 17-231. — For Law 17-231 see notes following § 21-501.

Legislative history of Law 17-249. — For Law 17-249, see notes following § 21-2002.

§ 21-2203. Presumption of capacity.

An individual shall be presumed capable of making health-care decisions unless certified otherwise under § 21-2204. Mental incapacity to make a health-care decision shall not be inferred from the fact that an individual:

(1) Has been voluntarily or involuntarily hospitalized for mental illness pursuant to § 21-501 et seq.;

(2) Has a diagnosis of mental retardation or has been determined by a court to be incompetent to refuse commitment under § 7-1301.01 et seq.; or

(3) Has a conservator or guardian appointed pursuant to § 21-1501 et seq. [repealed] or § 21-2001 et seq.

(Mar. 16, 1989, D.C. Law 7-189, § 4, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(d), 40 DCR 6311; Apr. 24, 2007, D.C. Law 16-305, § 35(d), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 21-2203.

Effect of amendments. — D.C. Law 16-305, in par. (2), substituted "Has a diagnosis of mental retardation" for "Is mentally retarded".

Legislative history of Law 7-189. — For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 21-501.

CASE NOTES

Due process.

In upholding validity of policy that directed administrator of District of Columbia's Mental Retardation and Developmental Disabilities Administration (MRDDA) to consent to medical procedures on behalf of intellectually disabled persons under certain circumstances, on prior appeal from district court's grant of summary judgment and injunctive relief in favor of plaintiffs challenging policy, Court of Appeals deter-

mined that administrator had authority to consent to medical procedures on behalf of consumers of MRDDA's services and did not violate due process-protected liberty interests of consumers who lacked capacity to make medical decisions for themselves by authorizing elective surgeries on their behalf, and therefore law of the case doctrine applied, on remand, to bar plaintiffs' claim that, prior to enactment of temporary legislation addressing consent issue, administrator violated liberty interests of consumers by consenting to elective medical procedures on their behalf. Does v. District of Columbia, 593 F.Supp.2d 115, 2009 U.S. Dist. LEXIS 661 (2009).

§ 21-2204. Certification of incapacity.

(a) Mental incapacity to make a health-care decision shall be certified by 2 professionals who are licensed to practice in the District and qualified to make a determination of mental incapacity. One of the 2 certifying professionals shall be a physician and one shall be a qualified psychologist or psychiatrist. At least 1 of the 2 certifying professionals shall examine the individual in question within 1 day preceding certification. Both certifying professionals shall give an opinion regarding the cause and nature of the mental incapacity as well as its extent and probable duration.

(b) All professional findings and opinions forming the basis of certification under subsection (a) of this section shall be expressed in writing, included in the patient-care records of the individual, and provide clear evidence that the person is incapable of understanding the health-care choice, making a decision concerning the particular treatment or services in question, or communicating a decision even if capable of making it.

(c) Certification of incapacity under this section shall be limited in its effect to the capacity to make health-care decisions and shall not be construed as a finding of incompetency for any other purpose.

(Mar. 16, 1989, D.C. Law 7-189, § 5, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(e), 40 DCR 6311; Oct. 22, 2008, D.C. Law 17-249, § 3(b), 55 DCR 9206.)

Cross references. — Presumption of capacity, health care decisions, see § 21-2203.

Substituted consent, health care decisions, see § 21-2210.

Prior Codifications. — 1981 Ed., § 21-2204.

Effect of amendments. — D.C. Law 17-249 rewrote subsec. (a), which had read as follows: "(a) Mental incapacity to make a health-care decision shall be certified by 2 physicians who are licensed to practice in the District and qualified to make a determination of mental incapacity. One of the 2 certifying physicians shall be a psychiatrist. At least 1 of the 2 certifying physicians shall examine the individual in question within 1 day preceding certification. Both certifying physicians shall give an opinion regarding the cause and nature of the mental incapacity as well as its extent and probable duration."

Temporary Amendment of Section. — Section 3(b) of D.C. Law 16-46, in subsec. (a), substituted "professionals" for "physicians" wherever it appears and substituted "One of the 2 certifying professionals shall be a physician and one shall be a qualified psychologist or psychiatrist." for "One of the 2 certifying physicians shall be a psychiatrist."

Section 6(b) of D.C. Law 16-46 provided that the act shall expire after 225 days of its having taken effect.

Section 3(b) of D.C. Law 16-194, in subsec. (a), substituted "professionals" for "physicians" throughout, and substituted "One of the 2 certifying professionals shall be a physician and one shall be a qualified psychologist or psychiatrist." for the second sentence.

Section 6(b) of D.C. Law 16-194 provided that the act shall expire after 225 days of its having taken effect.

Section 3(b) of D.C. Law 17-100, in subsec. (a), substituted "professionals" for "physicians" throughout and "One of the 2 certifying professionals shall be a physician and one shall be a qualified psychologist or psychiatrist." for the second sentence.

Section 6(b) of D.C. Law 17-100 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(b) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005 (D.C. Act 16-190, October 28, 2005, 52 DCR 10021).

For temporary (90 day) amendment of section, see § 3(b) of Health-Care Decisions for Persons with Mental Retardation and Development Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-262, January 26, 2006, 53 DCR 795).

For temporary (90 day) amendment of section, see § 3(b) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 3(b) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 3(b) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 3(b) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) amendment, see § 3(b) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 7-189. — For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

Legislative history of Law 17-249. — For Law 17-249, see notes following § 21-2002.

§ 21-2205. Durable power of attorney for health care.

(a) A competent adult may designate, in writing, an individual who shall be empowered to make health-care decisions on behalf of the competent adult, if the competent adult becomes incapable, by reason of mental disability, of making or communicating a choice regarding a particular health-care decision.

(b) A durable power of attorney for health care shall include language which clearly communicates that the principal intends the attorney in fact to have the authority to make health-care decisions on behalf of the principal and shall include language identical or substantially similar to the following:

(1) "This power of attorney shall not be affected by the subsequent incapacity of the principal."; or

(2) "This power of attorney becomes effective upon the incapacity of the principal."

(c) A durable power of attorney for health care shall be dated and signed by the principal and 2 adult witnesses who affirm that the principal was of sound mind and free from duress at the time of signing. The 2 adult witnesses shall not include the principal, the health-care provider of the principal or an employee of the health-care provider of the principal.

(d) Of the 2 adult witnesses referred to in subsection (c) of this section, at least 1 shall not be related to the principal by blood, marriage or adoption and shall not be entitled to any part of the estate of the principal by a current will or operation of law.

(e) Any durable power of attorney for health care executed prior to March 16, 1989, and specifically written to include health-care decision making after incompetency shall be effective, if the execution of the prior document meets the requirements of this chapter.

(Mar. 16, 1989, D.C. Law 7-189, § 6, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(f), 40 DCR 6311; Apr. 9, 1997, D.C. Law 11-255, § 20(e), 44 DCR 1271; Mar. 24, 1998, D.C. Law 12-81, § 14(aa), 45 DCR 745.)

Cross references. — Forms for creating a durable power of attorney for health care, see § 21-2207.

Patient or client records, obtaining from health care providers, see § 3-1210.11.

Prior Codifications. — 1981 Ed., § 21-2205.

Legislative history of Law 7-189. — For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 12-81. — For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-2201.

CASE NOTES

Construction and application.

Health Care Decisions Act, establishing procedures for making health care decisions for incompetent adults, does not govern decision whether to medicate defendant involuntarily to render him competent to stand trial. D.C. Code 1981, §§ 21-2201(a), 21-2203 to 21-2205, 22-2210, 24-301(a). Tran Van Khiem v. United States, 612 A.2d 160, 1992 D.C. App. LEXIS 218 (1992).

§ 21-2206. Rights and duties of attorney in fact.

(a) Subject to any express limitations in the durable power of attorney for health care, an attorney in fact shall have all the rights, powers and authority related to health-care decisions that the principal would have under District and federal law. This authority shall include, at a minimum:

(1) The authority to grant, refuse or withdraw consent to the provision of any health-care service, treatment, or procedure;

(2) The right to review the health care records of the principal;

(3) The right to be provided with all information necessary to make informed health-care decisions;

(4) The authority to select and discharge health-care professionals; and

(5) The authority to make decisions regarding admission to or discharge from health-care facilities and to take any lawful actions that may be necessary to carry out these decisions.

(b)(1) Except as provided in paragraph (2) of this subsection and unless a durable power of attorney for health care provides otherwise, the designated attorney in fact, if known to a health-care provider to be available and willing to make a particular health-care decision, shall have priority over any other person to act for the principal in all matters regarding health care.

(2) A designated attorney in fact shall not have the authority to make a particular health-care decision, if the principal is able to give or withhold informed consent with respect to that decision.

(c) In exercising authority under a durable power of attorney for health care, the attorney in fact shall have a duty to act in accordance with:

(1) The wishes of the principal as expressed in the durable power of attorney for health care; or

(2) The good faith belief of the attorney in fact as to the best interests of the principal, if the wishes of the principal are unknown and cannot be ascertained.

(d) Nothing in this chapter shall affect any right that an attorney in fact may have, independent of the designation in a durable power of attorney for health care, to make or otherwise participate in health-care decisions on behalf of the principal.

(Mar. 16, 1989, D.C. Law 7-189, § 7, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(g), 40 DCR 6311.)

Cross references. — Patient or client records, obtaining from health care providers, see § 3-1210.11.

Prior Codifications. — 1981 Ed., § 21-2206.

Legislative history of Law 7-189. — For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

§ 21-2207. Forms for creating a durable power of attorney for health care.

Any written form meeting the requirements of § 21-2205 may be used to create a durable power of attorney for health care. The following is offered as a sample form only and its inclusion in this section shall not be construed to preclude the use of alternative language:

"INFORMATION ABOUT THIS DOCUMENT

"THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, IT IS VITAL FOR YOU TO KNOW AND UNDERSTAND THESE FACTS:

"THIS DOCUMENT GIVES THE PERSON YOU NAME AS YOUR ATTORNEY IN FACT THE POWER TO MAKE HEALTH-CARE DECISIONS FOR YOU IF YOU CANNOT MAKE THE DECISIONS FOR YOURSELF.

"AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH-CARE DECISIONS FOR YOURSELF IF YOU ARE MENTALLY COMPETENT TO DO SO. IN ADDITION, AFTER YOU HAVE SIGNED THIS DOCUMENT, NO TREATMENT MAY BE GIVEN TO YOU OR STOPPED OVER YOUR OBJECTION IF YOU ARE MENTALLY COMPETENT TO MAKE THAT DECISION.

"YOU MAY STATE IN THIS DOCUMENT ANY TYPE OF TREATMENT THAT YOU DO NOT DESIRE AND ANY THAT YOU WANT TO MAKE SURE YOU RECEIVE.

"YOU HAVE THE RIGHT TO TAKE AWAY THE AUTHORITY OF YOUR ATTORNEY IN FACT, UNLESS YOU HAVE BEEN ADJUDICATED INCOMPETENT, BY NOTIFYING YOUR ATTORNEY IN FACT OR HEALTH-CARE PROVIDER EITHER ORALLY OR IN WRITING. SHOULD YOU REVOKE

THE AUTHORITY OF YOUR ATTORNEY IN FACT, IT IS ADVISABLE TO REVOKE IN WRITING AND TO PLACE COPIES OF THE REVOCATION WHEREVER THIS DOCUMENT IS LOCATED.

"IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A SOCIAL WORKER, LAWYER, OR OTHER PERSON TO EXPLAIN IT TO YOU.

* * * * *

"YOU SHOULD KEEP A COPY OF THIS DOCUMENT AFTER YOU HAVE SIGNED IT. GIVE A COPY TO THE PERSON YOU NAME AS YOUR ATTORNEY IN FACT. IF YOU ARE IN A HEALTH-CARE FACILITY, A COPY OF THIS DOCUMENT SHOULD BE INCLUDED IN YOUR MEDICAL RECORD.

"POWER OF ATTORNEY FOR HEALTH CARE

"I, _____, hereby appoint:

_____ _____
name home address

_____ _____
home telephone number

_____ _____
work telephone number

as my attorney in fact to make health-care decisions for me if I become unable to make my own health-care decisions. This gives my attorney in fact the power to grant, refuse, or withdraw consent on my behalf for any health-care service, treatment or procedure. My attorney in fact also has the authority to talk to health-care personnel, get information and sign forms necessary to carry out these decisions.

"If the person named as my attorney in fact is not available or is unable to act as my attorney in fact, I appoint the following person to serve in the order listed below:

1. _____ _____
name home address

_____ _____
home telephone number

_____ _____
work telephone number

2. _____ _____
name home address

_____ _____
home telephone number

_____ _____
work telephone number

"With this document, I intend to create a power of attorney for health care,

which shall take effect if I become incapable of making my own health-care decisions and shall continue during that incapacity.

"My attorney in fact shall make health-care decisions as I direct below or as I make known to my attorney in fact in some other way.

"(a) STATEMENT OF DIRECTIVES CONCERNING LIFE-PROLONGING CARE, TREATMENT, SERVICES, AND PROCEDURES:

_____

_____

_____

_____

_____

_____

_____

"(b) SPECIAL PROVISIONS AND LIMITATIONS:

_____

_____

_____

_____

_____

_____

"BY MY SIGNATURE I INDICATE THAT I UNDERSTAND THE PURPOSE AND EFFECT OF THIS DOCUMENT.

"I sign my name to this form on _____
(date)

at: _____

_____ (address).

_____
(Signature)

"WITNESSES

"I declare that the person who signed or acknowledged this document is personally known to me, that the person signed or acknowledged this durable power of attorney for health care in my presence, and that the person appears to be of sound mind and under no duress, fraud, or undue influence. I am not the person appointed as the attorney in fact by this document, nor am I the health-care provider of the principal or an employee of the health-care provider of the principal.

First Witness
Signature: _____
Home Address: _____
Print Name: _____
Date: _____

Second Witness
Signature: _____

Home Address: _____
Print Name: _____
Date: _____

(AT LEAST 1 OF THE WITNESSES LISTED ABOVE SHALL ALSO SIGN THE FOLLOWING DECLARATION.)

"I further declare that I am not related to the principal by blood, marriage or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the principal under a currently existing will or by operation of law.
Signature: _____
Signature: _____."

(Mar. 16, 1989, D.C. Law 7-189, § 8, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(h), 40 DCR 6311.)

Prior Codifications. — 1981 Ed., § 21-2207.

Legislative history of Law 7-189. — For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

§ 21-2208. Revocation.

(a) At any time that the principal has the capacity to create a durable power of attorney for health care, the principal may:

(1) Revoke the appointment of the attorney in fact under a durable power of attorney for health care by notifying the attorney in fact orally or in writing; or

(2) Revoke the authority to make health-care decisions granted to the attorney in fact under a durable power of attorney for health care by notifying the health-care provider orally or in writing.

(b) If a health-care provider is notified of a revocation pursuant to subsection (a)(2) of this section, the health-care provider shall document this fact in the patient-care records of the principal and make a reasonable effort to notify the attorney in fact of the revocation.

(c) There shall be a rebuttable presumption, affecting the burden of proof, that a principal has the capacity to revoke a durable power of attorney for health care.

(d) Unless it expressly provides otherwise, a valid durable power of attorney for health care revokes any prior durable power of attorney for health-care decisions only.

(e) Unless a durable power of attorney for health care expressly provides otherwise, and after its execution the marriage or domestic partnership of the principal is dissolved, annulled, or terminated in accordance with § 32-702(d)), the dissolution, annulment, or termination shall automatically revoke a designation of the former spouse or domestic partner as an attorney in fact to make health-care decisions for the principal. If a designation is revoked solely on account of this subsection, it shall be revived by the remarriage of the principal to the former spouse, or the reentry of the domestic partnership of the

principal to the domestic partner, but may be subsequently revoked by an act of the principal.

(Mar. 16, 1989, D.C. Law 7-189, § 9, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(i), 40 DCR 6311; Sept. 12, 2008, D.C. Law 17-231, § 22(h), 55 DCR 6758.)

Prior Codifications. — 1981 Ed., § 21-2208.

Effect of amendments. — D.C. Law 17-231 rewrote subsec. (e), which had read as follows: "(e) Unless a durable power of attorney for health care expressly provides otherwise, and after its execution the marriage of the principal is dissolved or annulled, the dissolution or annulment shall automatically revoke a designation of the former spouse as an attorney in fact to make health-care decisions for the principal. If a designation is revoked solely on account of this subsection, it shall be revived by the remarriage of the principal to the former spouse but may be subsequently revoked by an act of the principal."

Legislative history of Law 7-189. — For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 21-501.

§ 21-2209. Health-care provider limitation.

(a) No health-care provider may require an individual to execute a durable power of attorney for health care as a condition for the provision of health-care services or admission to a health-care facility, as defined in § 44-501.

(b) After an individual has spent at least 48 hours in a health care facility, a health care provider may request the individual to execute a durable power of attorney for health care subject to the limitations set forth in this chapter. The health care provider may not be named as the attorney in fact.

(Mar. 16, 1989, D.C. Law 7-189, § 10, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(j), 40 DCR 6311.)

Prior Codifications. — 1981 Ed., § 21-2209.

Legislative history of Law 7-189. — For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

§ 21-2210. Substituted consent.

(a) In the absence of a durable power of attorney for health care and provided that the incapacity of the principal has been certified in accordance with § 21-2204, the following individuals, in the order of priority set forth below, shall be authorized to grant, refuse or withdraw consent on behalf of the patient with respect to the provision of any health-care service, treatment, or procedure:

(1) A court-appointed guardian or conservator of the patient, if the consent is within the scope of the guardianship or conservatorship;

(1A) A court-appointed intellectual disability advocate of the patient, if the ability to grant, refuse, or withdraw consent is within the scope of the advocate's appointment under section 7-1304.13.

(2) The spouse or domestic partner of the patient;

(3) An adult child of the patient;

(4) A parent of the patient;

(5) An adult sibling of the patient;

(5A) A religious superior of the patient, if the patient is a member of a religious order or a diocesan priest;

(5B) A close friend of the patient; or

(6) The nearest living relative of the patient.

(b) A decision to grant, refuse or withdraw consent made pursuant to subsection (a) of this section shall be based on the known wishes of the patient or, if the wishes of the patient are unknown and cannot be ascertained, on a good faith belief as to the best interests of the patient.

(c) There shall be at least 1 witness present whenever a person specified in subsection (a)(2) through (6) of this section grants, refuses or withdraws consent on behalf of the patient.

(d) If no individual in a prior class is reasonably available, mentally capable and willing to act, responsibility for decisionmaking shall rest with the next reasonably available, mentally capable, and willing person on the priority list.

(e) Any person listed in subsection (a) of this section shall have legal standing to challenge in the Superior Court of the District of Columbia any decision made by a person of higher priority as listed within that subsection.

(f) The order of priority established in subsection (a) of this section creates a presumption that may be rebutted if a person of lower priority is found to have better knowledge of the wishes of the patient, or, if the wishes of the patient are unknown and cannot be ascertained, is better able to demonstrate a good-faith belief as to the interests of the patient.

(g) An individual identified in subsection (a)(5B) of this section shall not be authorized to grant, refuse, or withdraw consent on behalf of the patient with respect to a decision regarding a health-care service, treatment, or procedure if the individual is:

(1) A health-care provider who is treating or providing services to the incapacitated patient at the time of the health-care decision; or

(2) An owner, operator, administrator, or employee of, or a person with decision-making authority for, a health-care provider treating or providing services to the incapacitated patient at the time of the health-care decision.

(h) If no person listed in subsection (a) of this section is reasonably available, mentally capable, and willing to act, the health-care provider, or the District of Columbia, for those persons committed or admitted to receive habilitation or other services pursuant to Chapter 13 of Title 7, or any interested person may petition the Superior Court of the District of Columbia for appointment of a guardian pursuant to section 21-2044 or section 21-2046.

(i) The health-care provider who is treating or providing services to the incapacitated patient at the time of the health-care decision shall accept the decision of the individual authorized under this section to grant, refuse, or withdraw consent on behalf of the patient as the decision of the principal.

(Mar. 16, 1989, D.C. Law 7-189, § 11, 35 DCR 8653; Mar. 11, 1992, D.C. Law 9-67, § 2(b), 39 DCR 12; Feb. 5, 1994, D.C. Law 10-68, § 23(k), 40 DCR 6311;

June 21, 2003, D.C. Law 15-17, § 2(b), 50 DCR 3387; Mar. 13, 2004, D.C. Law 15-105, § 106, 51 DCR 881; Oct. 22, 2008, D.C. Law 17-249, § 3(c), 55 DCR 9206.)

Prior Codifications. — 1981 Ed., § 21-2210.

Effect of amendments. — D.C. Law 15-17, in subsec. (a), inserted "or domestic partner" after "spouse" in par. (2), made a nonsubstantive change in par. (5A), and added par. (5B); and added subsecs. (f) and (g).

D.C. Law 15-105, in subsec. (g), validated previously made technical corrections.

D.C. Law 17-249 added subsecs. (a)(1A), (h), and (i).

Temporary Amendment of Section. — Section 3(c) of D.C. Law 16-46 added par. (1A) to subsec. (a) and added subsec. (h) to read as follows:

"(1A) A court-appointed mental retardation advocate of the patient, if the ability to grant, refuse, or withdraw consent is within the scope of the advocate's appointment under § 7-1304.13."

"(h) If no person listed in subsection (a) of this section is reasonably available, mentally capable, and willing to act, the health-care provider, or the District of Columbia, for those persons committed or admitted to receive habilitation or other services pursuant to Chapter 13 of Title 7 of the District of Columbia Official Code, or any interested person may petition the Superior Court of the District of Columbia for appointment of a limited guardian for health care pursuant to § 21-2044(c)."

Section 6(a) of D.C. Law 16-46 provided that the act shall expire after 225 days of its having taken effect.

Section 3(c) of D.C. Law 16-194 added a new par. (1A) to subsec. (a), and added a new subsec. (h) to read as follows:

"(1A) A court-appointed mental retardation advocate of the patient, if the ability to grant, refuse, or withdraw consent is within the scope of the advocate's appointment under section 7-1304.13."

"(h) If no person listed in subsection (a) of this section is reasonably available, mentally capable, and willing to act, the health-care provider, or the District of Columbia, for those persons committed or admitted to receive habilitation or other services pursuant to Chapter 13 of Title 7, or any interested person may petition the Superior Court of the District of Columbia for appointment of a health-care guardian pursuant to section 21-2044 or section 21-2046."

Section 6(b) of D.C. Law 16-194 provided that the act shall expire after 225 days of its having taken effect.

Section 3(c) of D.C. Law 17-100 added subsecs. (a)(1A), (h), and (i) to read as follows:

"(1A) A court-appointed mental retardation advocate of the patient, if the ability to grant, refuse, or withdraw consent is within the scope of the advocate's appointment under section 7-1304.13."

"(h) If no person listed in subsection (a) of this section is reasonably available, mentally capable, and willing to act, the health-care provider, or the District of Columbia, for those persons committed or admitted to receive habilitation or other services pursuant to Chapter 13 of Title 7, or any interested person may petition the Superior Court of the District of Columbia for appointment of a health-care guardian pursuant to section 21-2044 or section 21-2046.

"(i) The health-care provider who is treating or providing services to the incapacitated patient at the time of the health-care decision shall accept the decision of the individual authorized under this section to grant, refuse, or withdraw consent on behalf of the patient as the decision of the principal."

Section 6(b) of D.C. Law 17-100 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(c) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005 (D.C. Act 16-190, October 28, 2005, 52 DCR 10021).

For temporary (90 day) amendment of section, see § 3(c) of Health-Care Decisions for Persons with Mental Retardation and Development Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-262, January 26, 2006, 53 DCR 795).

For temporary (90 day) amendment of section, see § 3(c) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 3(c) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 3(c) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 3(c) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act

of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) amendment, see § 3(c) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 7-189. — For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

Legislative history of Law 9-67. — For legislative history of D.C. Law 9-67, see Historical and Statutory Notes following § 21-2202.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

Legislative history of Law 15-17. — For Law 15-17, see notes following § 21-2202.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 21-541.

Legislative history of Law 17-249. — For Law 17-249, see notes following § 21-2002.

CASE NOTES

ANALYSIS

Due process.
In general.
Summary judgment.

Due process.

In upholding validity of policy that directed administrator of District of Columbia's Mental Retardation and Developmental Disabilities Administration (MRDDA) to consent to medical procedures on behalf of intellectually disabled persons under certain circumstances, on prior appeal from district court's grant of summary judgment and injunctive relief in favor of plaintiffs challenging policy, Court of Appeals determined that administrator had authority to consent to medical procedures on behalf of consumers of MRDDA's services and did not violate due process-protected liberty interests of consumers who lacked capacity to make medical decisions for themselves by authorizing elective surgeries on their behalf, and therefore law of the case doctrine applied, on remand, to bar plaintiffs' claim that, prior to enactment of temporary legislation addressing consent issue, administrator violated liberty interests of consumers by consenting to elective medical procedures on their behalf. Does v. District of Columbia, 593 F.Supp.2d 115, 2009 U.S. Dist. LEXIS 661 (2009).

In general.

When a person is incompetent, or when the court is unable to determine the person's competence to accept or refuse medical treatment, the substituted judgment procedure must be followed; in undertaking that inquiry, which is primarily a subjective one, court must consider the totality of the evidence," including the patient's value system, goals, information provided by the patient's family, and, if applicable, any past decisions the patient may have made regarding medical care, and if an examination of those sources fails or is insufficient to determine the subjective desires of the patient, court should supplement its knowledge about the patient by determining what most persons would likely do in a similar situation. Does v. District of Columbia, 374 F.Supp.2d 107, 2005 U.S. Dist. LEXIS 11703 (2005).

Mentally retarded adult women who received habilitation services from the District of Columbia through the Mental Retardation and Developmental Disabilities Administration (MRDDA) were entitled to preliminary injunctive relief requiring MRDDA generally to apply the "substituted judgment standard," and specifically to comply with a statutory provision that outlined both who may provide consent for medical treatment or surgeries performed on a legally incompetent person as well as the steps that must be undertaken to establish that consent; plaintiffs established a likelihood of success on the merits of their claims that MRDDA violated their rights by failing to employ substituted judgment in medical consent decisions and regularly and deliberately disregarded the wishes of family members, and demonstrated that they would suffer irreparable harm absent an injunction. Does v. District of Columbia, 374 F.Supp.2d 107, 2005 U.S. Dist. LEXIS 11703 (2005).

Mentally retarded adult women who received habilitation services from the District of Columbia through the Mental Retardation and Developmental Disabilities Administration (MRDDA) had standing to seek preliminary injunctive relief requiring MRDDA generally to apply the "substituted judgment standard," and specifically to comply with statutory provision that outlined both who may provide consent for medical treatment or surgeries performed on a legally incompetent person as well as the steps that must be undertaken to establish that consent; complaint asserted that MRDDA replaced the policy in effect at the time of the named plaintiffs' injuries with another surgical consent policy but did not remedy the constitutional infirmities of the earlier policy, improperly authorized surgical procedures for members of the putative class from 1970 through the present, and continued to authorize such surgeries, placing plaintiffs at risk for future violations of their rights. Does v. District

of Columbia, 374 F.Supp.2d 107, 2005 U.S. Dist. LEXIS 11703 (2005).

Summary judgment.

Material issues of fact existed as to whether District of Columbia's Mental Retardation and Developmental Disabilities Administration (MRDDA) had custom or policy of failing to contact, or ignoring or overriding wishes of, those persons authorized to consent to medical procedures on behalf of intellectually disabled persons who obtained services from MRDDA facility, precluding summary judgment for either plaintiffs or District of Columbia on claim alleging that MRDDA administrator violated due process-protected liberty interests of facility's consumers by consenting to elective surgeries on their behalf without first attempting to obtain consent from, or after ignoring wishes of, those persons authorized to make medical decisions for consumers. Does v. District of Columbia, 593 F.Supp.2d 115, 2009 U.S. Dist. LEXIS 661 (2009).

§ 21-2211. Limitations.

No person authorized to act pursuant to § 21-2210 shall have the power:

(1) To consent to an abortion, sterilization or psycho-surgery, unless authorized by a court; or

(2) To consent to convulsive therapy or behavior modification programs involving aversive stimuli, unless authorized by a court.

(Mar. 16, 1989, D.C. Law 7-189, § 12, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(l), 40 DCR 6311.)

Prior Codifications. — 1981 Ed., § 21-2211.

Legislative history of Law 7-189. — For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

§ 21-2212. Effect of chapter.

(a) Nothing in this chapter shall be construed to condone, authorize, or approve mercy-killing or to permit any affirmative or deliberate act to end a human life other than to permit the natural dying process.

(b) Nothing in this chapter shall be construed to conflict with or supersede, the Emergency Medical Treatment and Labor Act, approved April 17, 1986 (100 Stat. 164; 42 U.S.C. § 1395dd).

(c) Emergency health care may be provided without consent to a patient who is certified incapacitated under § 21-2204, if no authorized person is reasonably available or if, in the reasonable medical judgment of the attending physician, attempting to locate an authorized person would cause:

(1) A substantial risk of death;

(2) The health of the incapacitated individual to be placed in serious jeopardy;

(3) Serious impairment to the incapacitated individual's bodily functions; or

(4) Serious dysfunction of any bodily organ or part of the incapacitated individual.

(Mar. 16, 1989, D.C. Law 7-189, § 13, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(m), 40 DCR 6311; Oct. 22, 2008, D.C. Law 17-249, § 3(d), 55 DCR 9206.)

Prior Codifications. — 1981 Ed., § 21-2212.

Effect of amendments. — D.C. Law 17-249 rewrote the section, which had read as follows: "Nothing in this chapter shall be construed to condone, authorize, or approve mercy-killing or to permit any affirmative or deliberate act to end a human life other than to permit the natural process of dying."

Temporary Amendment of Section. — Section 3(d) of D.C. Law 16-194 amended this section to read as follows: "§ 21-2212. Effect of chapter.

"(a) Nothing in this chapter shall be construed to condone, authorize, or approve mercy-killing or to permit any affirmative or deliberate act to end a human life other than to permit the natural dying process.

"(b) Nothing in this chapter shall be construed to conflict with or supersede, the Emergency Medical Treatment and Labor Act, approved April 17, 1986 (100 Stat. 164; 42 U.S.C. § 1395dd).

"(c) Emergency health care may be provided without consent to a patient who is certified incapacitated under § 21-2204 if no authorized person is reasonably available or if, in the reasonable medical judgment of the attending physician, attempting to locate an authorized person would cause:

"(1) A substantial risk of death;

"(2) The health of the incapacitated individual to be placed in serious jeopardy;

"(3) Serious impairment to the incapacitated individual's bodily functions; or

"(4) Serious dysfunction of any bodily organ or part."

Section 6(b) of D.C. Law 16-194 provided that the act shall expire after 225 days of its having taken effect.

Section 3(d) of D.C. Law 17-100 amended the section to read as follows: "§ 21-2212. Effect of chapter.

"(a) Nothing in this chapter shall be construed to condone, authorize, or approve mercy-killing or to permit any affirmative or deliberate act to end a human life other than to permit the natural dying process.

"(b) Nothing in this chapter shall be construed to conflict with or supersede, the Emergency Medical Treatment and Labor Act, approved April 17, 1986 (100 Stat. 164; 42 U.S.C. § 1395dd).

"(c) Emergency health care may be provided without consent to a patient who is certified incapacitated under § 21-2204, if no authorized person is reasonably available or if, in the reasonable medical judgment of the attending physician, attempting to locate an authorized person would cause:

"(1) A substantial risk of death to the incapacitated individual;

"(2) The health of the incapacitated individual to be placed in serious jeopardy;

"(3) Serious impairment to the incapacitated individual's bodily functions; or

"(4) Serious dysfunction of a bodily organ or part of the incapacitated individual".

Section 6(b) of D.C. Law 17-100 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 3(d) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 3(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 3(d) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) amendment, see § 3(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 7-189. — For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

Legislative history of Law 17-249. — For Law 17-249, see notes following § 21-2002.

§ 21-2213. Construction.

This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(Mar. 16, 1989, D.C. Law 7-189, § 14, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(n), 40 DCR 6311.)

Prior Codifications. — 1981 Ed., § 21-2213.

Legislative history of Law 7-189. — For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

Legislative history of Law 10-68. — For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

CHAPTER 23. CUSTODIAL POWER OF ATTORNEY.

Sec.
21-2301. Custodial power of attorney.

§ 21-2301. Custodial power of attorney.

(a) The parent of a child may create a revocable custodial power of attorney that grants to another person any of the parent's rights and responsibilities regarding the care, physical custody, and control of the child, including the ability to:

(1) Enroll the child in school;

(2) Obtain from the school educational and behavioral information about the child;

(3) Consent to all school-related matters regarding the child; and

(4) Consent to medical, psychological, or dental treatment for the child.

(b) The custodial power of attorney may not grant authority to consent to the marriage or adoption of the child.

(c) The custodial power of attorney shall not affect the rights of the parent of the child in any proceeding concerning custody of the child or the allocation of parental rights and responsibilities for the care of the child.

(Sept. 20, 2007, D.C. Law 17-21, § 4(b), 54 DCR 6835.)

Emergency legislation. — For temporary (90 day) addition, see § 4(b) of Safe and Stable Homes for Children and Youth Emergency Amendment Act of 2007 (D.C. Act 17-69, July 9, 2007, 54 DCR 6826).

Legislative history of Law 17-21. — Law 17-21, the "Safe and Stable Homes for Children and Youth Amendment Act of 2007", was introduced in Council and assigned Bill No. 17-41 which was referred to the Committees of Human Services and Public Safety and Judiciary. The Bill was adopted on first and second readings on June 5, 2007, and June 21, 2007, respectively. Signed by the Mayor on July 9, 2007, it was assigned Act No. 17-70 and transmitted to both Houses of Congress for its review. D.C. Law 17-21 became effective on September 20, 2007.

CHAPTER 24. ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION; UNIFORM ACT.

Subchapter I. General Provisions

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Subchapter I. General Provisions.

§ 21-2401.01. Short title.

This chapter may be cited as the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act".

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — Law 17-270, the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act of 2008", was introduced in Council and assigned Bill No. 17-585 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on July 15, 2008, and September 16, 2008, respectively. Signed by the Mayor on September 30, 2008, it was assigned Act No. 17-523 and transmitted to both Houses of Congress for its review. D.C. Law 17-270 became effective on November 25, 2008.

Editor's notes. — Uniform Law: This section is based upon § 101 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 21-2401.02. Definitions.

For the purposes of this chapter, the term:

(1) "Adult" means an individual who has attained 18 years of age.

(2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under §§ 21-2001 to 21-2077.

(3) "Guardian" means a person appointed by the court to make decisions

regarding the person of an adult, including a person appointed under §§ 21-2001 to 21-2077.

(4) "Guardianship order" means an order appointing a guardian.

(5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(6) "Incapacitated person" means an adult for whom a guardian has been appointed.

(7) "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

(8) "Person," except in the term "incapacitated person" or "protected person", means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(9) "Protected person" means an adult for whom a protective order has been issued.

(10) "Protective order" means an order appointing a conservator or other order related to management of an adult's property.

(11) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(15) "Superior Court" means the Superior Court of the District of Columbia.

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 102 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 21-2401.03. International application of chapter.

The Superior Court may treat a foreign country as if it were a state for the purpose of applying this subchapter and Subchapters II, III, and V [of this chapter].

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 103 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 21-2401.04. Communication between courts.

(a) The Superior Court may communicate with a court in another state concerning a proceeding arising under this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (b) of this section, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(b) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 104 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 21-2401.05. Cooperation between courts.

(a) In a guardianship or protective proceeding in the District of Columbia, the Superior Court may request the appropriate court of another state to do any of the following:

(1) Hold an evidentiary hearing;

(2) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(3) Order that an evaluation or assessment be made of the respondent;

(4) Order any appropriate investigation of a person involved in a proceeding;

(5) Forward to the Superior Court a certified copy of the transcript or other record of a hearing under paragraph (1) of this subsection or any other proceeding, any evidence otherwise produced under paragraph (2) of this subsection, and any evaluation or assessment prepared in compliance with an order under paragraph (3) or (4) of this subsection;

(6) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person; or

(7) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. § 164.504.

(b) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (a) of this section, the Superior Court has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 105 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 21-2401.06. Taking testimony in another state.

(a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in the District of Columbia for testimony taken in another state. The Superior Court, on its own motion, may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(b) In a guardianship or protective proceeding, the Superior Court may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. The Superior Court shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to the Superior Court by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 106 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Subchapter II. Jurisdiction.

§ 21-2402.01. Definitions; significant connection factors.

(a) For the purposes of this subchapter, the term:

(1) "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf.

(2) "Home state" means:

(A) The state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or

(B) If none, the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months ending within the 6 months prior to the filing of the petition.

(3) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection, other than mere physical presence, and in which substantial evidence concerning the respondent is available.

(b) In determining under §§ 21-2402.03 and 21-2403.01(e) whether a respondent has a significant connection with a particular state, the Superior Court shall consider:

(1) The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(2) The length of time the respondent at any time was physically present in the state and the duration of any absence;

(3) The location of the respondent's property; and

(4) The extent to which the respondent has ties to the state, such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 201 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 21-2402.02. Exclusive basis.

This subchapter provides the exclusive jurisdictional basis for the Superior Court to appoint a guardian or issue a protective order for an adult.

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 202 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 21-2402.03. Jurisdiction.

The Superior Court has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) The District of Columbia is the respondent's home state;

(2) On the date the petition is filed, the District of Columbia is a significant-connection state and:

(A) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because the District of Columbia is a more appropriate forum; or

(B) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the Superior Court makes the appointment or issues the order:

(i) A petition for an appointment or order is not filed in the respondent's home state;

(ii) An objection to the Superior Court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) The Superior Court concludes that it is an appropriate forum under the factors set forth in § 21-2402.06;

(3) The District of Columbia does not have jurisdiction under either paragraph (1) or (2) of this subsection, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because the District is the more appropriate forum, and jurisdiction in the District is consistent with Title 11 and the Constitution of the United States; or

(4) The requirements for special jurisdiction under § 21-2402.04 are met.

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 203 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 21-2402.04. Special jurisdiction.

(a) Even if the Superior Court lacks jurisdiction under § 21-2402.03, the court has special jurisdiction to do any of the following:

(1) Appoint a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically present in the District of Columbia;

(2) Issue a protective order with respect to real or tangible personal property located in the District of Columbia;

(3) Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to § 21-2403.01.

(b) If a petition for the appointment of a guardian in an emergency is brought in the District of Columbia and the District was not the respondent's home state on the date the petition was filed, the Superior Court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 204 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 21-2402.05. Exclusive and continuing jurisdiction.

Except as otherwise provided in § 21-2402.04, a court that has appointed a guardian or issued a protective order consistent with this chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 205 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 21-2402.06. Appropriate forum.

(a) Even if the Superior Court has jurisdiction under § 21-2402.03 to appoint a guardian or issue a protective order, the court may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(b) If the Superior Court declines to exercise its jurisdiction under subsection (a) of this section, it shall either dismiss or stay the proceeding. The court

may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(c) In determining whether it is an appropriate forum, the Superior Court shall consider all relevant factors, including:

(1) Any expressed preference of the respondent;

(2) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

(3) The length of time the respondent was physically present in or was a legal resident of this or another state;

(4) The distance of the respondent from the court in each state;

(5) The financial circumstances of the respondent's estate;

(6) The nature and location of the evidence;

(7) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(8) The familiarity of the court of each state with the facts and issues in the proceeding; and

(9) If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 206 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 21-2402.07. Jurisdiction declined by reason of conduct.

(a) If at any time the Superior Court determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(1) Decline to exercise jurisdiction;

(2) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(3) Continue to exercise jurisdiction after considering:

(A) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(B) Whether it is a more appropriate forum than the court of any other state under the factors set forth in § 21-2402.06(c); and

(C) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of § 21-2402.03.

(b) If the Superior Court determines that it acquired jurisdiction to appoint

a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against the District of Columbia or a governmental subdivision, agency, or instrumentality of the District unless authorized by law other than this chapter.

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 207 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 21-2402.08. Notice of proceeding.

If a petition for the appointment of a guardian or issuance of a protective order is brought in the District of Columbia and the District was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of the District, notice of the petition shall be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice shall be given in the same manner as notice is required to be given in the District.

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 208 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 21-2402.09. Proceedings in more than one state.

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in the District of Columbia under § 21-2402.04(a)(1) or (2), if a petition for the appointment of a guardian or issuance of a protective order is filed in the District and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the Superior Court has jurisdiction under § 21-2402.03, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to § 21-2402.03 before the appointment or issuance of the order.

(2) If the Superior Court does not have jurisdiction under § 21-2402.03, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the Superior Court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the Superior Court shall dismiss the petition unless the court

in the other state determines that the Superior Court is a more appropriate forum.

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 209 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Subchapter III. Transfer of Guardianship or Conservatorship.

§ 21-2403.01. Transfer of guardianship or conservatorship to another state.

(a) A guardian or conservator appointed in the District of Columbia may petition the Superior Court to transfer the guardianship or conservatorship to another state.

(b) Notice of a petition under subsection (a) of this section shall be given to the persons that would be entitled to notice of a petition in the District of Columbia for the appointment of a guardian or conservator.

(c) On the Superior Court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the Superior Court shall hold a hearing on a petition filed pursuant to subsection (a) of this section.

(d) The Superior Court shall issue a provisional order granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the Superior Court is satisfied that the guardianship will be accepted by the court in the other state and the Superior Court finds that:

(1) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(3) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(e) The Superior Court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the Superior Court is satisfied that the conservatorship will be accepted by the court of the other state and the Superior Court finds that:

(1) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state, considering the factors in § 21-2402.01(b);

(2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(3) Adequate arrangements will be made for management of the protected person's property.

(f) The Superior Court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(1) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to § 21-2403.02; and

(2) The documents required to terminate a guardianship or conservatorship in the District of Columbia.

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 301 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 21-2403.02. Accepting guardianship or conservatorship transferred from another state.

(a) To confirm transfer of a guardianship or conservatorship transferred to the District of Columbia under provisions similar to § 21-2403.01, the guardian or conservator shall petition the Superior Court to accept the guardianship or conservatorship. The petition shall include a certified copy of the other state's provisional order of transfer.

(b) Notice of a petition under subsection (a) of this section shall be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and the District of Columbia. The notice shall be given in the same manner as notice is required to be given in the District.

(c) On the Superior Court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the Superior Court shall hold a hearing on a petition filed pursuant to subsection (a) of this section.

(d) The Superior Court shall issue a provisional order granting a petition filed under subsection (a) of this section unless:

(1) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(2) The guardian or conservator is ineligible for appointment in the District of Columbia.

(e) The Superior Court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in the District of Columbia upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to § 21-2403.01 transferring the proceeding to the District.

(f) Not later than 90 days after issuance of a final order accepting transfer of a guardianship or conservatorship, the Superior Court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of the District of Columbia.

(g) In granting a petition under this section, the Superior Court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(h) The denial by the Superior Court of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in the District of Columbia under §§ 21-2001 to 21-2077 if the Superior Court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 302 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Subchapter IV. Registration and Recognition of Orders from Other States.

§ 21-2404.01. Registration of guardianship orders.

If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in the District of Columbia, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in the District by filing as a foreign judgment in the Superior Court certified copies of the order and letters of office.

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 401 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 21-2404.02. Registration of protective orders.

If a conservator has been appointed in another state and a petition for a protective order is not pending in the District of Columbia, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in the District by filing as a foreign judgment in the Superior Court certified copies of the order and letters of office and of any bond.

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 402 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 21-2404.03. Effect of registration.

(a) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in the District of Columbia all powers authorized in the order of appointment except as prohibited under the laws of the District, including maintaining actions and proceedings in the District and, if the guardian or conservator is not a resident of the District, subject to any conditions imposed upon nonresident parties.

(b) The Superior Court may grant any relief available under this chapter and other law of the District of Columbia to enforce a registered order.

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 403 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Subchapter V. Miscellaneous Provisions.

§ 21-2405.01. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 501 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 21-2405.02. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 et seq.), but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 502 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 21-2405.03. Transitional provision.

(a) This chapter applies to guardianship and protective proceedings begun on or after [November 25, 2008].

(b) Subchapters I, III, and IV [of this chapter] and §§ 21-2405.01 and

21-2405.02 apply to proceedings begun before [November 25, 2008], regardless of whether a guardianship or protective order has been issued.

(Nov. 25, 2008, D.C. Law 17-270, § 2(b), 55 DCR 11018.)

Legislative history of Law 17-270. — For Law 17-270, see notes following § 21-2401.01.

Editor's notes. — Uniform Law: This section is based upon § 504 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.